Calendar No. 1883

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1861

AMENDING SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

APRIL 26, 1956.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 3113]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3113), to amend section 9 of the Merchant Ship Sales Act of 1946, as amended, having considered the same, report favorably thereon with amendments and recommend that the bill as reported do pass.

AMENDMENTS

On page 1, line 7, strike out the words "October 1, 1955" and insert in lieu thereof the words "the date of enactment of this amendatory proviso."

On page 1, line 10, strike out the word "amendment" and insert in lieu thereof the words "amendatory proviso."

PURPOSE OF THE BILL

S. 3113, as reported by the committee, would amend section 9 (c) (2) of the Merchant Ship Sales Act of 1946 so as to make it inapplicable to charters entered into with the Government after date of enactment of this amendment.

S. 3113 is similar in purpose to S. 1918 of the 83d Congress, which was passed by the Senate on May 4 1954, but did not reach the House floor in time to be considered before adjournment. This bill is, however, less inclusive and, unlike S. 1918, contains no element of retroactivity as amended by the committee.

The bill is aimed at removing what the committee considers an unintended but obvious discrimination against those persons who purchased war-built vessels prior to the enactment of the Merchant Ship Sales Act of 1946 (March 8, 1946) and who entered into an

agreement with the Government for an adjustment of the purchase price under section 9 of the Ship Sales Act.

The purpose of section 9 was to give to citizens who purchased war-built vessels prior to the date of enactment of the Ship Sales Act an adjustment of price, the amount of which was determined by a formula which reflected the use of the vessel by the purchaser prior to the date of enactment. In the language of section 9 such adjustment is made—

> by treating the vessel as if it were being sold to the applicant on the date of enactment of this act and not before that time.

Section 9 (c) (2) provides that any adjustment in price in the case of war-built vessels bought prior to March 8, 1946, shall be made only if the applicant for such adjustment enters into an agreement with the Government to the effect that—

(a) The liability of the United States for any use of a price-adjusted vessel shall not exceed 15 percent per annum of the statutory sales price, and

(b) The liability for the loss of any such vessel, while under charter to the Government, shall be determined on the basis of the statutory sales price depreciated to date of loss at 5 percent per annum.

Neither foreign nor United States citizen purchasers, who acquired similar vessels subsequently to the passage of the Ship Sales Act, were obligated to accept either of the aforementioned conditions. Consequently section 9 created an inequality in the status of those who purchased prior to the passage of the Act and those who purchased subsequently, and such inequality evidently was never intended. This bill, as reported and recommended by your committee, would establish equality in that respect.

The Department of Commerce and Maritime Administration offered no objection to favorable consideration of the bill provided that no retroactivity was involved. An amendment to the bill as introduced, offered by them to so provide, has been accepted by the committee and is contained in the bill now recommended. In his testimony at the hearing on the bill, the Maritime Administrator stated:

> Section 9 of the Merchant Ship Sales Act of 1946 authorized adjustments in the purchase price of vessels bought by citizens of the United States from the United States Maritime Commission during World War II. A substantial number of such vessels were purchased, some with construction subsidy allowance under the Merchant Marine Act, 1936, but others at full wartime cost without such subsidy. As appears from the committee reports on the ship sales legislation (S. Rept. No. 807, 79th Cong.; H. Rept. No. 831, 79th Cong.), Congress adopted the price adjustment provisions for such prior sales of war-built vessels as corollary to the establishment of a definite pricing policy for war-build vessels to be disposed of after the war.
>
> The bill would place the liability of the United States with respect to charter of price adjusted vessels under section 902 of the 1936 act; i. e., the same basis as its liability in the case of charter or loss of a war-built vessel sold under the Merchant Ship Sales Act of 1946. It may be noted that the Con-

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gress voted down a proposal to amend the bill which became the Merchant Ship Sales Act of 1946, to provide a special charter use and loss limitation upon vessels sold under the 1946 act.

The question of policy involved in the bill is peculiarly a matter of legislative policy for determination by the Congress under the circumstances. We have no objection to your favorable consideration of the bill, amended as recommended herein, in view of the history and purpose of the provision of law proposed to be rendered inoperative as to future charters only.

The Bureau of the Budget was quoted by the Administrator to the effect that—

> it would appear that the shipowners knowingly accepted these limitations to obtain adjustments in sales price. We are inclined to believe that the retroactive changing of the statutory basis of contracts voluntarily entered into is unsound in principle.

The Comptroller General, in his report on the bill, also made reference to "valid contracts voluntarily entered into."

The committee heard specific testimony to the effect that at least some of the applicants made protest against the execution of adjustment contracts containing the discriminatory language required by section 9 (c) (2), and did not accept their adjustments until required to do so or to withdraw their applications and forfeit the right to an adjustment. Regardless of what motivated the signing of the agreement for adjustment by the purchaser, it clearly resulted in what the committee feels is an inequitable and unintended discrimination against those persons who purchased vessels prior to the enactment of the Ship Sales Act of 1946.

Reports from the Comptroller General, the Department of the Navy, and the Department of the Treasury on the bill are appended.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported, are shown as follows (new matter is printed in italics, matter proposed to be omitted in brackets, existing law in which no change is proposed is shown in roman):

MERCHANT SHIP SALES ACT OF 1946, ADJUSTMENT FOR PRIOR SALES TO CITIZENS

SEC. 9. (c) (2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum: *Pro-*

vided, That the provisions of this subsection (c) (2) shall not apply to any such charter party executed on or after the date of enactment of this amendatory proviso; and the Secretary of Commerce is directed to modify any adjustment agreement to the extent necessary to conform to the provisions of this amendatory proviso; and

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 13, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate

DEAR MR. CHAIRMAN: Further reference is made to your letter of February 2, 1956, acknowledged on February 3, enclosing a copy of S. 3113, 84th Congress, 2d session, entitled "A Bill To amend section 9 (c) (2) of the Merchant Ship Sales Act of 1946, as amended," and requesting our comments on the proposed legislation.

S. 3113 would make inapplicable after October 1, 1955, the restrictive limitations imposed by section 9(c) (2) of the Merchant Ship Sales Act of 1946, 50 U. S. C. App. 1742, upon those who purchased war-built vessels from the former Maritime Commission under the provisions of the Merchant Marine Act of 1936, as a condition for downward adjustments in the purchase price of such vessels. The restrictions proposed to be removed provide, generally, that the Government's liability for "use" of the vessels shall not exceed 15 per centum per annum of the statutory sales prices, determined as of March 8, 1946, and that compensation for the loss of such vessels while under such charter parties shall be their statutory sales prices, less depreciation at the rate of 5 per centum per annum to the date of loss. The removal of these restrictions would permit the owners of these vessels to receive charter hire in excess of 15 per centum per annum of the statutory sales prices and to receive "just compensation" under section 902 of the Merchant Marine Act, 1936, for their use or loss, without regard to their contractual agreements.

It appears that 264 war-built vessels sold under the 1936 act were eligible to apply for adjustments under section 9 of the 1946 act. No applications were filed for section 9 adjustments on 60 of those vessels and, of the 204 applications received, 13 were withdrawn. Adjustment agreements have been made on the remaining 191 applications and each such agreement incorporated verbatim the provisions of section 9 (c) (2) and 9 (c) (3) of the 1946 act. It may be noted that section 9 (c) (3) became ineffective with the end of the national emergency on April 28, 1952. The reasons why no purchase price adjustments were requested on 73 of the vessels are a matter of conjecture but we suggested in our report of July 8, 1953, to your committee on a similar bill (S. 1918, 83d Cong.) that the purchasers who declined to apply therefor may have been influenced by their desires not to be committed to the restrictive limitations which would be removed by S. 3113. Another obvious reason for a purchaser not applying for the section 9 adjustment would be an unfavorable balance to the operator under the provision of section 9 (b) (6) which requires a credit to the Government for its charter of the "use" of the war-built vessel as compared with the charter hire the operator would have received for the vessel it traded-in. However, it is to be noted that not all war-built vessels necessarily involved any chartering to the

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Government subsequent to their purchase. In any event, it seems reasonable to speculate that if a removal of the restrictive limitations is considered equitable to those who applied for and received section 9 adjustments, the equities likewise would appear to require reestablishing for a limited time an opportunity for the purchasers of the 73 vessels on which adjustments of the purchase prices were not made to apply for such adjustments.

Section 9 of the 1946 act established the formula for determining the adjustment of the sales prices of war-built vessels and specified the restrictions and conditions applicable thereto. The application for the adjustment was, of course, voluntary on the part of the purchaser.

Presumably the date of October 1, 1955, contained in S. 3113 is provided to overcome the objection made to the retroactive feature contained in a prior bill having the same general objective and has no other special significance. It is therefore suggested that any consideration of the bill include an amendment of the specified date to one more current.

In summary, the matter involves weighing the unsoundness in principle of changing the terms of valid contracts voluntarily entered into against the inequity complained of by the proponents of this bill, namely, that purchasers of war-built vessels bought after March 8, 1946, were not required to accept the restrictive limitations imposed upon those who purchased prior to that date and received purchase price reductions under section 9.

Aside from the foregoing comments and information, the proposed legislation involves a matter of policy in which we are not directly concerned and we make no recommendation in the matter.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., March 10, 1956.

In reply refer to JAG:IV:HJC:djb.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Your request for comments on S. 3113, a bill to amend section 9 (c) (2) of the Merchant Ship Sales Act of 1946, as amended, has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

This bill would provide that provisions of existing law setting limitations on liability of the United States for use or loss of a vessel under a charter party shall not apply to any charter party executed on or after October 1, 1955.

Charters executed by the Military Sea Transportation Service provide (under war-risk addendum) that under certain circumstances (e. g., when acts of the Government vitiate insurance maintained by the owner) the Government will indemnify the owner for any loss, damage, or expense. Under such a provision the Government could

conceivably be required to pay for the value of the vessel in the event of total loss.

Under section 9 (c) (2) of the Merchant Ships Sales Act of 1946, as amended, the loss shall be determined on the basis of the statutory sales price of the vessel as of March 8, 1946, depreciated to the date of loss at the rate of 5 percent per annum. The proposed amendment would remove this limitation effective as of October 1, 1955, and the loss thereafter would be determined on the value of the vessel at the time of loss. Under present market conditions, this value is much higher than the value established by the act as now written.

An amendment of the act by which the limitation on charter hire for use is deleted or modified probably is justified due to increases of maintenance costs, including increases in the replacement costs for equipment, but the same reasoning does not pertain to the value of the ship in case of total loss while under charter to the government.

It is considered that this bill is of primary concern to the Department of Commerce, and would only remotely affect the operations of the Department of Defense.

Accordingly the Department of the Navy on behalf of the Department of Defense refrains from further comment or recommendation.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report on S. 3113 to the Congress.

Sincerely yours,

IRA H. NUNN,
Rear Admiral, USN,
Judge Advocate General of the Navy
(For the Secretary of the Navy).

TREASURY DEPARTMENT,
February 10, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 3113, to amend section 9 (c) (2) of the Merchant Ship Sales Act of 1946, as amended.

The bill would amend section 9 (c) (2) of the Merchant Ship Sales Act to eliminate the requirement that persons accepting a price adjustment under the act agree that the liability of the Government for future use of a vessel shall not exceed 15 percent of the statutory sales price and that the liability for the loss of a vessel shall be determined on the basis of the statutory sales price depreciated at the rate of 5 percent per annum.

The bill would appear to relate to a matter within the purview of the Department of Commerce and not within the special province of this Department. Accordingly, the Department has no recommendation to make as to the general merits of the proposed legislation.

Very truly yours,

(Signed) FRED C. SCRIBNER, JR.,
General Counsel.

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Calendar No. 1884

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1862

CIVIL PENALTIES FOR FAILURE TO FILE VESSEL UTILIZATION AND PERFORMANCE REPORTS

APRIL 26, 1956.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 3265]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3265) to amend title II of the Merchant Marine Act, 1936, as amended, to provide for filing vessel utilization and performance reports by operators of vessels in the foreign commerce of the United States, having considered the same, report favorably thereon without amendment, and recommend that the bill as reported do pass.

PURPOSE OF THE BILL

To assist the Secretary of Commerce in carrying out his duties of promoting the interests of American shipping and the foreign commerce of the Nation, and to provide essential data on such matters for the use of both Government and industry, operators of vessels in the waterborne commerce of the United States are required to file reports on the utilization and performance of their vessels.

These reports must include a summary of the ship's cargo manifest and other information not required to be filed with any other Government agency. They are of the utmost significance to the Secretary of Commerce in the determination of various questions falling within the scope of his duties.

Under present regulations, vessel operators have 10 days, excluding Saturdays, Sundays, and holidays, after entering the first United States port and after clearing the last United States port, to file such reports. When these reports are not filed within the specified period, time and effort must be expended to secure the reports by administrative officials and by the collectors of customs, who are charged with the responsibility of receiving these reports in the field.

As the law now stands operators who fail to make the required reports within the period prescribed can be prosecuted under section

806 (d) of the 1936 act. This relates to a criminal offense and provides for a fine only upon conviction for a "knowing and willful" violation of the regulation.

S. 3265 would provide that the penalties prescribed therein—$50 per day of any violation—may be imposed without requiring court proceedings, and that such penalties will constitute a lien against the vessel. It is believed that this procedure will be more effective in securing prompt compliance with the regulation requiring the filing of such reports.

The bill would permit the Secretary of Commerce, in his discretion, to remit or mitigate any penalty involved under this proposed legislation, on such terms as he may deem proper. Your committee understands this provision to indicate that, in the event of a failure to file within the time prescribed, by an operator whose performance in this respect has been satisfactory, reasonable evidence to the effect that such failure was unintentional and unavoidable will be a persuasive consideration for leniency on the part of the Secretary of Commerce. Thus the objectives of the bill can be realized, and enforcement of filing regulations strengthened, without unduly harsh penalties on any operator.

The letter from the Secretary of Commerce, requesting introduction of the bill, with an accompanying statement of purpose, is appended herewith, together with the report of the Comptroller General, recommending favorable consideration, and that of the Department of the Interior, offering no objection to enactment. The enactment of the proposed legislation, it was emphasized by the Secretary of Commerce in requesting introduction of the bill—

> would not require any additional expenditure of funds, but on the contrary is expected to lessen the cost to the Government in collecting and processing these reports.

No government or other opposition was expressed.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (new matter is printed in italics):

MERCHANT MARINE ACT, 1936

* * * * *

TITLE II * * *

SEC. 212 * * *

SEC. 212. (A) The operator of a vessel in waterborne foreign commerce of the United States shall file at such times and in such manner as the Secretary of Commerce may prescribe by regulations, such report, account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as

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required by this section and the regulations issued hereunder, shall be liable to the United States in a penalty of $50 for each day of such violation. The amount of any penalty imposed for any violation of this section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Commerce may, in his discretion, remit or mitigate any penalty imposed under this section on such terms as he may deem proper.

THE SECRETARY OF COMMERCE,
Washington, July 22, 1955.

The PRESIDENT OF THE SENATE,
United States Senate, Washington, D. C.

DEAR MR. PRESIDENT: There is submitted herewith draft and statement of purpose and provisions of a bill to amend title II of the Merchant Marine Act, 1936, as amended, to provide for filing vessel utilization and performance reports by operators of vessels in the foreign commerce of the United States.

Among the duties of the Secretary of Commerce are the study of all maritime problems, the determination of the best methods of meeting foreign competition, and the promotion of foreign commerce of the United States.

In order that these duties may be effectively performed, operators of vessels in the waterborne commerce of the United States are required to file reports on the utilization and performance of such vessels consisting of a summary of the ship's cargo manifest and of other relevant data. These reports furnish useful information to the American public on our ocean commerce and foreign trade, for use of our Department, the Departments of Defense and Justice, the Public Health Service, and congressional committees. Some vessel operators are tardy in filing these reports and a great deal of time and effort is spent in getting them to file promptly.

At present the filing of these reports can be enforced by a criminal proceeding under section 806 (d) of the 1936 act, as amended, but it does not seem proper that the omission or delay in filing these reports, important though they may be, justifies prosecution by a criminal proceeding. It is believed that a civil penalty would in practice be more effective in securing the prompt filing of these reports.

The purpose and provisions of the proposed legislation are set forth in detail in the accompanying statement.

The Department urges early consideration and enactment of the proposed legislation.

The Director of the Bureau of the Budget has advised that there would be no objection to the submission of the proposed legislation.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

A BILL To amend title II of the Merchant Marine Act, 1936, as amended, to provide for filing vessel utilization and performance reports by operators of vessels in the foreign commerce of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title II of the Merchant Marine Act, 1936, as amended (46 U. S. C., 1111 to 1127), is amended by inserting after section 212 (46 U. S. C., 1122) a new section 212A to read as follows:

"SEC. 212A. The operator of a vessel in waterborne foreign commerce of the United States shall file at such times and in such manner as the Secretary of Commerce may prescribe by regulations, such report, account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this section and the regulations issued hereunder, shall be liable to the United States in a penalty of $50 for each day of such violation. The amount of any penalty imposed for any violation of this section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Commerce may, in his discretion, remit or mitigate any penalty imposed under this section on such terms as he may deem proper."

STATEMENT OF PURPOSE AND PROVISIONS OF DRAFT BILL TO AMEND TITLE II OF THE MERCHANT MARINE ACT, 1936, AS AMENDED, TO PROVIDE FOR FILING VESSEL UTILIZATION AND PERFORMANCE REPORTS BY OPERATORS OF VESSELS IN THE FOREIGN COMMERCE OF THE UNITED STATES

The Secretary of Commerce and the Federal Maritime Board have the following duties, among others, under the provisions of the Merchant Marine Act, 1936, as amended: determination of essential trade routes (sec. 211 (a)); study of all maritime problems (sec. 212 (a)); determination of necessity of meeting foreign-flag competition and promotion of foreign commerce of the United States (secs. 601 (a) and 602); determination of substantial disadvantage of United States flag vis-a-vis foreign-flag operators (sec. 603 (b)); determination of inadequacy of service, or determination of undue advantage as between citizens (sec. 605 (c)); and determination of necessity for change in service (sec. 606 (3)).

In order that these duties be more effectively discharged, General Order 39 was revised effective February 15, 1951 (16 F. R. 859), to require persons operating vessels in the waterborne foreign commerce of the United States to file reports on the utilization and performance of such vessels. These reports consist of a summary of the ship's

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cargo manifest, plus specific ship operating data not now filed with any other Federal agency report. At the request of the shipping industry, the time for filing the reports was extended from 4 days, not including Sundays and holidays, to 10 days excluding Saturdays, Sundays, and holidays, after entering the first United States port and after clearing the last United States port.

In addition to furnishing the Federal Maritime Board and the Maritime Administration with the data necessary in the administration of the 1936 act, these reports also furnish the American commercial public with information on the flow of ocean commerce in the foreign trade of the United States. Steamship companies, trade associations and other public bodies make constant use of the material contained therein. The United States Departments of Commerce, Defense, Justice, the Public Health Service and congressional committees are vitally interested in the information contained in these reports.

Some vessel operators do not file utilization and performance reports promptly and undue time and effort of administrative officials are used to get operators to file the reports. Collectors of customs, who are charged with the responsibility of receiving these reports in the field, likewise spend time and energy in seeking to get prompt filing. Most important of all, as has been stated, the proper administration of the 1936 act is impeded.

At present, the filing of these reports can be enforced only by recourse to section 806 (d) of the 1936 act, which provides that whoever "knowingly and willfully" violates any order, rule or regulation of the Secretary of Commerce or the Federal Maritime Board for which no penalty is otherwise provided, shall upon conviction be subject to a fine not exceeding $500 and, if such violation continues, each day shall constitute a separate offense. To obtain a conviction under this section involves so much time and expense that no criminal proceedings have been instituted against delinquents for delayed filing of reports. Furthermore, tardy filing of a statistical report, important though it is to the satisfactory administration of the act, hardly justifies the stigma of a criminal proceeding. It is believed that a civil penalty instead of a criminal conviction would make it possible to secure compliance with report requirements, so that the reports will be filed on time.

The draft bill would insert a new section in title II of the Merchant Marine Act, 1936, as amended, requiring operators in the waterborne foreign commerce of the United States to file utilization and performance reports in accordance with regulations prescribed by the Secretary of Commerce, and making failure to file such reports punishable by a penalty.

The proposed legislation would apply to operators of all vessels engaged in foreign commerce of the United States. It is expected that the reports will be substantially in the form now in use under General Order 39 and are to be filed as at present. The term "utilization and performance" reports is well known in the shipping industry. Such reports, modified from time to time have been required and filed by ship operators for more than 30 years.

The enactment of the proposed legislation would not require any additional expenditure of funds, but on the contrary is expected to lessen the cost to the Government in collecting and processing these reports.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 22, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate.

DEAR MR. CHAIRMAN: Further reference is made to your letter of February 23, 1956, acknowledged February 27, inviting any comments we may care to offer concerning S. 3265, 84th Congress, 2d session, entitled "A bill to amend title II of the Merchant Marine Act, 1936, as amended, to provide for filing vessel utilization and performance reports by operators of vessels in the foreign commerce of the United States."

Maritime Administration needs vessel utilization and performance reports for the proper execution of its responsibilities under the Merchant Marine Act, 1936, as amended. To obtain the maximum benefit of such reports, they must be submitted timely and be as accurate as possible.

The Maritime Administration now requires the submission of vessel utilization and performance reports pursuant to the authority contained in section 21 of the Shipping Act of 1916 and section 204 (b) of the Merchant Marine Act, 1936. Inasmuch as so-called ocean tramps are excepted by section 1 of the 1916 act from the term "common carrier by water," as used in section 21 of that act, section 806 (d) of the 1936 act is invoked to enforce compliance by the operators of ocean tramps with the Administration's reporting requirements. However, section 806 (d) relates to a criminal offense and provides for a fine only upon conviction of a "knowing and willful" violation of a Maritime Administration regulation.

Since the penalties prescribed in S. 3265 may be imposed without the necessity of a conviction of the operator and constitute liens upon the vessels involved, it apparently will effectively reduce or eliminate the violations of the regulations requiring vessel utilization and performance reports. Accordingly, we recommend favorable consideration of the bill.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., April 13, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR SENATOR MAGNUSON: This responds to your request for the views of this Department on S. 3266, a bill to authorize officers of the Coast and Geodetic Survey to act as notaries in places outside the continental limits of the United States and in Alaska.

This Department has no objection to the enactment of the bill.

S. 3266 would provide that commanding officers of the Coast and Geodetic Survey vessels and such other officers of the Coast and Geodetic Survey as the Secretary of Commerce may designate may exercise the powers of the notary public in Alaska and in places beyond the continental limits of the United States.

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This Department is not aware of the extent to which a problem exists in these areas with respect to the performance of notarial actions such as administering oaths for the acknowledgment and attestation of instruments and papers.

It should be pointed out, however, that in Alaska, a Federal statute dating from 1900 authorizes the Governor to appoint and commission notaries public for the Territory (48 U. S. C., sec. 26). Additionally, each postmaster within the Territory of Alaska is authorized and directed to administer oaths and affirmations and to take acknowledgments, and to make and execute certificates thereof and to perform all other functions of the notary public within the Territory whenever such action is authorized, permitted or required by any other act of Congress or legislature of the Territory (48 U. S. C., sec. 35a).

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

WESLEY A. D'EWART,
Assistant Secretary of the Interior.

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Calendar No. 1885

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1863

AUTHORIZING THE SECRETARY OF COMMERCE TO SELL CERTAIN WAR-BUILT VESSELS

APRIL 26, 1956.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. J. Res. 513]

The Committee on Interstate and Foreign Commerce, to whom was referred the joint resolution (H. J. Res. 513) to authorize the Secretary of Commerce to sell certain war-built cargo vessels and for other purposes, having considered the same, report favorably thereon without amendment, and recommend that the joint resolution as reported do pass.

PURPOSE OF THE JOINT RESOLUTION

Authority for sale of Government-owned vessels, under the Merchant Ship Sales Act of 1946, was terminated on January 15, 1951. Hence, legislation is necessary to authorize sale of such vessels at this time. House Joint Resolution 513 would permit the sale to the Alaska Steamship Co., which has been serving the water transportation needs of Alaskan ports for some 60 years, of 2 CI–MA–VI type vessels named in the resolution. These 2 vessels have been under charter to the aforesaid company since 1948, along with 2 other dry-cargo vessels of this type and 2 vessels equipped to carry full refrigerated cargoes. Four combination vessels, carrying both passengers and cargo, formerly were operated by the company in the Alaska service but were discontinued last year because of continued operating losses.

The Alaska Steamship Co. witness stated, as reason for the request for authority to purchase the vessels, that during the operation of the vessels under charter the company has been able only to pay the required charter hire, and has earned no profit on their operation; nor has it been able to make depreciation accruals toward ultimate replacement of the vessels. Further, the witness argued that the purchase of these two vessels would add more stability to the company's opera-

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tions, inasmuch as the charters for the vessels are subject to termination by the Government on 15 days' notice as well as upon annual review for renewal.

The committee has been informed that there are no vessels of this type available upon the open market.

PUBLIC INTEREST ISSUE INVOLVED

Maritime Administrator Clarence G. Morse testified at the hearing on Senate Joint Resolution 132, the companion bill in the Senate, that the Department of Commerce—

> is on record as not favoring generally the reopening of the program of sale of war-built vessels. We have opposed such legislation unless some peculiar or special reason has existed for such sale and the sale would not be prejudicial in any respect to citizens of the United States who have purchased vessels under the 1946 act prior to termination of the authority to sell. We believe that in this case the sale of these specific vessels will fill a requirement important to the national economy and will not unduly interfere with existing private investment and operation, and that authority to sell these vessels may be favorably considered by the Congress.

He made approval of the resolution conditioned upon adoption of the amendment, included in the House resolution as sent to the Senate, that the two vessels be restricted to service between the west coast of the United States and Alaska.

The Alaska transportation problem has been before Congress on numerous occasions. Because of the long distances and the fact that practically all consumers goods have to be imported, adequate and reasonable ocean transportation is essential to the economic development of the Territory. Some 60 ports require ocean transportation service and the record is clear, proponents of the resolution say, that the Alaska Steamship Co. is the only operator endeavoring to render service to this entire range of ports. Transportation to many of the smaller ports is possible only with these smaller MA–VI type of vessels and only when coupled with transportation to other and larger ports.

There are three other water carriers operating in the Alaska trade. The Coastwise Line, which maintains a service from ports in California, Oregon, and Washington, to the so-called rail-belt ports of Whittier, Valdez, Anchorage, and Seward, with conventional vessel-type operations, advised the committee that it had no objection to the enactment of House Joint Resolution 513. Later, by telegram dated March 21, signed by William F. Ragan, counsel, Coastwise Line, the committee was advised that "board of directors, Coastwise, were not aware of failure to protest. Coastwise does protest since such sale would constitute unfair competition to Coastwise Line, and constitute indirect subsidy to Alaska Steam." The objection is particularly directed to opening the service of these vessels to California ports. Inasmuch as the Alaska Steamship Co. states that it intends to use the two vessels involved in the proposed sale in service between ports in the Puget Sound area and in Alaska, the committee suggests that

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the Maritime Administrator include language to that effect in the contracts of sale, without denying to the purchaser the right to request permission to call at other points if and when desired.

A representative of the Alaska Freight Line, which operates tug and barge services from the Northwest to the rail-belt ports, objected at the hearing that the enactment of this joint resolution would freeze these two vessels into competition with them, whereas so long as the vessels remain under charter from the Maritime Administration, such competition could be removed if the traffic were such as not to necessitate their continued operation. The Alaska Freight Line has been in operation in the trade as a common carrier since 1952. The Alaska Merchant Line of Alaska, Inc., oppose the proposed sale but "do not oppose continuation of charter until better service is available."

It should be emphasized that the Alaska Steamship Co. now has 4 CI–MA–VI type vessels under charter from the Government, the 2 involved in the resolution, and 2 others. Accordingly, if the resolution, as amended, is enacted into law, which this committee urges, and the events feared by the Alaska Freight Line should occur, the two remaining charters can be canceled.

The committee gave weight to the consideration that the Alaska Steamship Co. was serving a wide range of Alaskan ports for approximately half a century prior to entrance of other lines into this field.

The Comptroller General reported "No objection" in his report of March 1, 1956, on Senate Joint Resolution 132. Reporting on House Joint Resolution 513, on April 23, 1956, he again offered no objection, as did the Department of the Navy. No opposition was expressed by any other Government agencies. Enactment of the resolution was urged by the Governor of Alaska, and by labor and industrial groups in the Seattle-Alaska area.

There would be no changes in existing law if the resolution is enacted.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 1, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: Further reference is made to your letter of February 2, 1956, enclosing copies of S. 3108, S. 3113, and Senate Joint Resolution 132, 84th Congress, 2d session, and requesting any comments we may care to offer on the proposed measures.

Separate reports will be furnished on S. 3108 and S. 3113.

Senate Joint Resolution 132 would authorize the Secretary of Commerce during a period of 6 months after enactment to sell 2 CI–M–AV–1 type cargo vessels, the *Square Knot* and *Square Sinnet*, on an "as is, where is" basis to the Alaska Steamship Co. for $460,499 and $463,529, respectively. Such sales prices are to be reduced by $127 and $126 per day, respectively, for the period beginning January 16, 1956, and ending with the date of execution of the contract of sale of the vessels. The bill further provides that the Alaska Steamship Co. shall pay not less than 25 percent of the sales price of each vessel at the time of execution of the contract, with the balance payable in approximately equal annual installments over the remainder (approximately 9 years) of the 20-year economic life of the vessel, with interest at the rate of 3½ percent per year.

The bill also contains provisions relating to the amount that the owner would be paid in the event the United States subsequently purchased or requisitioned the vessels and further provides for documentation under the laws of the United States during the remainder of the 20-year economic life of the vessels, or longer if there remains a balance of principal or interest due the United States.

The two vessels involved were commissioned on March 22 and May 29, 1945, and have been bareboat chartered from the Government by the Alaska Steamship Co. since July and August 1948 for operation from the west coast of the United States to Alaska. They are presently operated in such service and it is reported that, if sold to the Alaska Steamship Co., they will continue in that service.

The floor price of each of the two vessels within the meaning of section 3 (e), Merchant Ship Sales Act of 1946, was $693,862. This is the price at which the vessels would have had to be sold prior to the expiration of the ship-sales authority on January 15, 1951. The sales price for each of the 2 vessels, $460,499 and $463,259, respectively, was determined by Maritime by depreciating the floor price of $693,862, less a residual value of $32,000, over the remainder of a 20-year life, (5,176 days for the *Square Knot* and 5,244 days for the *Square Sinnet*), for the period January 15, 1951, to January 15, 1956. The calculation results in depreciation rates of approximately $127 and $126 per day, respectively, which are the same daily depreciation rates provided for in the bill for depreciation from January 16, 1956 to date of execution of the contract of sale. The method of arriving at the sales prices is the same as that used in determining the sales prices on the steamship *President Cleveland* and steamship *President Wilson*, which were authorized for sale by Public Law 553, 83d Congress, 2d session. We have been advised that there are now in the Reserve fleets 68 vessels of the same type as the 2 proposed for sale.

It is difficult to ascertain what might be a fair market value for each of the two vessels in question since, aside from two such vessels purchased by the Republic of Korea under the authority of Public Law 665, 83d Congress, 2d session, there has been only one recent sale. In that sale the United Fruit Co. sold to the Alaska Steamship Co. a similar type vessel for $558,000, and that sale, according to informal advice, was a negotiated sale involving other considerations and hence may not be representative of the current market value. However, while we have no information that any operator other than the Alaska Steamship Co. may be interested in purchasing these two vessels, it is suggested that if their sale is to be authorized, it would be desirable in the absence of cogent reasons to the contrary, to offer them for sale to a citizen of the United States at competitive bidding, with the prices set forth in Senate Joint Resolution 132 as the minimum acceptable bids.

Aside from the suggested consideration of competitive bidding, the prices are consonant with the formula used in pricing war-built ships under the Merchant Ship Sales Act of 1946, and since it is the policy of the Government that its operating merchant marine be privately owned, we have no objection to this bill.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

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COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, April 23, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: Further reference is made to your letter of April 12, 1956, acknowledged on April 16, inviting our comments on House Joint Resolution 513, 84th Congress, 2d session, as introduced April 11, to authorize the Secretary of Commerce to sell two C1–M–AV–1 type cargo vessels, the *Square Knot* and *Square Sinnet*.

House Joint Resolution 513 is identical to Senate Joint Resolution 132, on which we commented in our report to you on March 1, 1956, excepting the additional provision in the subject print of House Joint Resolution 513, as follows:

"Except with the prior approval of the Secretary of Commerce any vessel sold under this joint resolution shall, during the period ending December 31, 1965, or so long as there remains due the United States any principal or interest on account of the purchase price, whichever is the longer period, be operated only in service between the west coast of the United States and the Territory of Alaska."

In our report on Senate Joint Resolution 132, we suggested consideration of competitive bidding on the two vessels. However, this was before the Maritime Administrator's recommendation was made that the operation of the vessels be limited to the Alaskan trade. The adoption of that recommendation by the insertion of the above-quoted provision and the absence of any known interest by other companies in the purchase of the vessels for operation in the Alaskan trade appears to preclude the probability that competitive bidding would serve any useful purpose.

Accordingly, since the prices at which it is proposed to sell the vessels to the Alaska Steamship Co., Ltd., are consonant with the formula used in pricing war-built ships under the Merchant Ship Sales Act of 1946, and since it is the policy of the Government that its operating merchant marine be privately owned, we have no objection to this bill.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., March 9, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Your request for comment on the joint resolution, Senate Joint Resolution 132 to authorize the Secretary of Commerce to sell certain war-built cargo vessels and for other purposes, has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

This proposal would authorize the Secretary of Commerce to sell two named C1–M–AV1 type cargo vessels to the Alaska Steamship Co., and further provides that the vessels shall remain documented under the laws of the United States for the remainder of the 20-year economic life of the vessels or as long as any of the purchase price remains unpaid, whichever is longer.

The Department of the Navy on behalf of the Department of Defense interposes no objection to the enactment of Senate Joint Resolution 132.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

Sincerely yours.

IRA H. NUNN,
Rear Admiral, USN,
Judge Advocate General of the Navy
(For the Secretary of the Navy).

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Calendar No. 1886

84TH CONGRESS
2d Session

SENATE

REPORT
No. 1864

FEDERAL FLOOD INSURANCE ACT OF 1956

REPORT

FROM THE

COMMITTEE ON BANKING AND CURRENCY

TO ACCOMPANY

S. 3732

APRIL 26, 1956.—Ordered to be printed

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84TH CONGRESS, 2d Session | SENATE | REPORT No. 1864

FEDERAL FLOOD INSURANCE ACT OF 1956

APRIL 26, 1956.—Ordered to be printed

Mr. LEHMAN, from the Committee on Banking and Currency, submitted the following

REPORT

[To accompany S. 3732

The Committee on Banking and Currency, having considered proposals to authorize insurance against flood damage, report favorably a committee bill (S. 3732) to provide insurance against flood damage, and for other purposes, and recommend that the bill do pass.

GENERAL STATEMENT

The heavy losses left in the wake of recent hurricanes have dramatized the lack of generally available insurance protection against flood damage. An individual can get insurance protection against the risk of destruction caused by storms, lightning, earthquake, and many other natural catastrophes, but not against the risk of floods. This fact prompted the Banking and Currency Committee to conduct an intensive study of the feasibility of a Federal disaster-insurance program to fill this gap in insurance protection.

As background for the study, the chairman directed the committee staff to prepare a report on data and opinions necessary to a sound consideration of a Federal disaster-insurance program. The staff report was available to each member of the committee during the hearings in late 1955 and early 1956. It has since been made available as a public document (S. Rept. No. 1313).

Between October 31 and December 19, 1955, with Senator Lehman presiding as acting chairman, the committee held 8 hearings on the general subject of disaster insurance, the hearings being held in the District of Columbia, New York, Massachusetts, Rhode Island, Connecticut, and North Carolina. Further hearings on specific legislative proposals were conducted in Washington, D. C., on February 16, 17, 21, 23, and 27, 1956. These sessions received a most comprehensive range of testimony from representatives of insurance associations and companies, from public officials, and from private persons and public interest organizations in the areas ravaged by floods and hurricanes.

As a result of its extensive studies and hearings, the committee gathered and analyzed sufficient information on flood-insurance problems to enable it to formulate, from the various legislative proposals that were submitted to it, a committee proposal for a Federal flood-insurance program that will meet the urgent need and at the same time take cognizance of the practical difficulties involved.

The difficulties in the way of formulating a practical program are not to be minimized but the committee was confronted with evidence of an overwhelming need for a program of Federal insurance against the risk of flood damage.

Private insurance companies will not at this time furnish this insurance, generally claiming that it is impractical as a commercial proposition. Only the Government can undertake the pilot program which may eventually lead to the assumption by private insurance companies of responsibility for covering the risk of damage from floods.

The Federal flood insurance program recommended by this committee is intended to blaze the trail and establish the actuarial and other experience needed to show, if it can be shown, that flood-risk insurance can be offered by private companies on a commercially feasible basis.

At the same time the committee has recognized the need to control within reasonable limits the financial risk to which the Government will be exposed. This has been done by making this program an experimental one, with strict limits on the amount of insurance that can be written and the amount of coverage any individual, corporation, or Government entity can acquire from the Federal Government.

Federal flood insurance is supported by numerous Members of Congress, public and private groups, individual citizens, and also by President Eisenhower and former President Truman as well. The bill herein reported is based on much careful research and the advice of experts in the insurance industry. It represents a sound approach to a pilot program of Federal flood insurance, and the committee strongly recommends its passage at the earliest possible date.

History of Legislation

On August 20, 1951, following the disastrous floods in the Midwest, President Truman sent to the Congress a special message (H. Doc. 228, 82d Cong., 1st sess.) requesting, among other things, $50 million in appropriations for a revolving fund for the financing of a Federal flood-insurance program. This request was referred to the respective Congressional Appropriations Committees. Both committees, however, declined the request, the Senate committee noting that the subject should be reviewed by the appropriate standing committees.

Earlier, legislation for Federal indemnity for flood loss had been introduced by Senator Hennings and Congressman Bolling. Moreover, on September 20, 1951, Senator Carlson introduced a bill (S. 2148) to establish a National Disaster Insurance Corporation. This measure would have authorized a Federal Government reinsurance program for insurance by existing companies against losses caused by flood, tidal wave, earthquake, or hurricane. Private real or personal property, as well as that owned by State or local government, was to be covered if private insurance was unavailable.

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On May 5, 1952, President Truman sent another message to the Congress containing recommendations relative to national flood insurance, and attaching a copy of draft legislation (H. Doc. 485, 82d Cong., 2d sess.). This measure was introduced on May 9, 1952, by Senator Maybank, then chairman of this committee. On May 5, 1952, a companion bill was introduced in the House of Representatives by Congressman Bolling as H. R. 7726. No final action was taken on these measures.

No bill dealing with flood insurance was introduced either in the 83d or the 1st session of the 84th Congress in the Senate. In the House, Congressman Bolling reintroduced H. R. 7726 as H. R. 377 on January 3, 1953. No further legislative action was taken on this bill.

Renewed interest in legislation of this nature arose following the disastrous loss and damage caused by hurricanes and floods in August 1955. After requests by Senators Lehman and Bush of this committee and by other Members of Congress, Chairman Fulbright directed the committee staff to study the practicability of Federal disaster insurance. The staff began preparation of draft bills at the request of Senator Bush and of Senator Lehman.

On August 23, 1955, President Eisenhower met with the governors of the flood-stricken Northeastern States at Bradley Field near Hartford, Conn. He issued a statement, in part as follows:

> We're going into the business of seeing whether * * * we can get insurance through some cooperation between insurance companies and States and Federal Governments to prevent the kind of losses that have been suffered by our industries.

On August 28, 1955, Senator Lehman's office announced he would introduce an omnibus bill providing for Federal disaster insurance and empowering the Federal Civil Defense Administration to meet the effects of both manmade (atomic) and natural disaster. On September 12, 1955, Senators Kennedy and Saltonstall made public the draft of a proposed flood insurance bill which they said would be introduced in the Senate when the Congress reconvened. Similar evidences of interest in appropriate disaster-insurance legislation were received from several other Members of the Senate, including Senator Carlson, Senator Ervin, Senator Green, Senator Johnston of South Carolina, Senator Pastore, Senator Payne, and Senator Purtell. Paralleling this activity, a study of the feasibility of a Federal flood-insurance program was undertaken by the executive branch, under the direction of the Bureau of the Budget.

In President Eisenhower's January 5, 1956, message on the state of the Union, he again referred to the need for careful consideration of flood-insurance problems, stating:

> Disaster-assistance legislation requires overhauling and an experimental program of flood-damage indemnities should be undertaken. The administration will make recommendations on these subjects.

From these various measures and expressions of interest there developed two main bills which this committee considered in executive session. The first was S. 2862, introduced on January 5, 1956, by Senator Bush for himself, Senator Purtell, Senator Duff, Senator

Kuchel, Senator Ives, Senator Payne, Senator Case of New Jersey, Senator Kennedy, Senator Watkins, Senator Capehart, Senator Smith of New Jersey, Senator Saltonstall, Senator Flanders, Senator Wiley, Senator Malone, Senator Thye, Senator Barrett, Senator Bender, and Senator Young. On January 18, 1956, Senator Bush introduced an amendment in the nature of a substitute to S. 2862. S. 2862, and subsequently the substitute amendment, became identified as the administration's proposal. The second bill, S. 3137, resulted from a reconciliation of two measures originally proposed by Senator Lehman and by Senator Kennedy. The so-called Lehman-Kennedy bill (S. 3137) was introduced on February 6, 1956, by Senator Lehman for himself, Senator Kennedy, Senator Morse, Senator Neuberger, Senator Green, Senator Pastore, Senator Scott, Senator Johnston, Senator Ervin, Senator Sparkman, and Senator Kefauver.

The several legislative proposals on this subject pending before the committee were referred to the committee's Subcommittee on Securities under the chairmanship of Senator Lehman. The present committee bill, unanimously reported by the subcommittee, and subsequently by the full committee, also by unanimous vote, represents in major part a reconciliation of the Lehman-Kennedy bill (S. 3137) and the Bush bill (S. 2862).

Provisions of S. 3732

The committee bill creates an agency called the Federal Flood Insurance Administration. It would be located, for housekeeping purposes, in the Housing and Home Finance Agency, and administered by a Commissioner appointed by the President and approved by the Senate.

The bill authorizes the Commissioner to issue direct flood-insurance policies and provide reinsurance for policies issued by private insurance companies. Private insurance facilities would be used to market policies and adjust claims. The private insurance companies and associations have assured this committee of their readiness to cooperate in every way.

The Commissioner is directed to establish a schedule of "estimated rates" for the insurance that would be offered under the bill. This schedule would be computed by the Commissioner on the basis of his evaluation of the actual risks involved for each class of property in each area and location. These estimated rates would be uniform for similar risks within each separate class of property.

The estimated rates would be fixed at actuarial levels, as far as possible, on the basis of all available flood damage data.

The schedule of estimated rates would be used as the basis for a schedule of fees to be charged for the flood-insurance policies. No insurance policy could be issued for a fee lower than 60 percent of the corresponding estimated rate for the particular category of property involved.

The maximum limit on the outstanding face amount of insurance which could be issued to any one "person" is $250,000. In the case of dwellings the face amount is limited to a maximum of $10,000 per dwelling unit and appurtenances.

Risk exposure of the Government—the total face value of insurance to be written—is limited to $3 billion (or $5 billion with the approval of the President) plus an amount equal to the fees collected. An

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exposure of $5 billion is actually very small. This is demonstrated by testimony received by the committee that a single private insurance company has outstanding about $20 billion worth of extended coverage insurance (primarily windstorm) compared with total company assets of only about $1¼ billion. Nevertheless, this bill should permit a pilot program in the flood-insurance field and test its feasibility.

As in the case of most automobile collision insurance, the committee bill contains a "loss-deductible" provision for the purpose of eliminating "nuisance" claims. This provision relieves the Government from liability for paying (*a*) the first $100 of any loss, and (*b*) 5 percent of the rest of the claim. These are minimum figures which the Commissioner is authorized to raise, for different classes of property and risks.

The premium rate and the terms and conditions of any policies issued by private insurance companies on the basis of Government reinsurance are made subject to the Commissioner's approval.

The Commissioner is directed to use his best efforts to encourage private companies to insure that portion of the risk in excess of the per policy limit established for direct Federal insurance. In order to encourage the entry of private companies into this field, the Commissioner may offer a suitable program of Federal reinsurance within the limitations prescribed by the bill. In addition, the Commissioner is authorized to encourage, through Federal reinsurance, the issuance by private insurance companies of policies insuring generally against flood loss. These provisions offer private insurance companies an opportunity to enter the flood-insurance field with the aid of Federal reinsurance.

The bill expressly provides that neither direct insurance nor reinsurance can be issued against risks for which insurance is already available on reasonable terms from other public or private sources.

The bill authorizes coverage of both real and personal property owned privately or by public bodies.

The term "flood" is broadly defined to include the water component of any severe storm as well as rising waters and abnormally high tidal water. The Commissioner is also authorized to assign such other specific meaning to the generic term "flood" as he may prescribe by regulation.

In an effort to minimize losses and to avoid putting a premium on high-risk construction, the bill contains two specific provisions relating to zoning. The first of these excludes from coverage any property declared by an appropriate public body to be in violation of State or local flood zoning laws. The second provides that after June 30, 1958, a condition of coverage shall be that such public flood zoning restrictions as the Commissioner may deem necessary shall be in effect.

The bill provides for consultation by the Commissioner with other Federal, State and local government agencies having responsibilities in the fields of land use, flood control, flood zoning and flood damage prevention in order to assure that the insurance and reinsurance programs carried on under this bill are consistent with the programs of such agencies.

The Federal Flood Insurance Administration is required by the bill to obtain its administrative expense moneys from direct appropriations made by the Congress. All other funds for operation of FFIA will be obtained from (1) fees collected from purchasers of insurance policies

and organizations making reinsurance agreements; (2) earnings on the investment and reinvestment of such fees; (3) salvage proceeds received in the course of operations under the bill; and (4) funds borrowed from the United States Treasury (up to a total limit of $500 million or such greater amount as the President may approve).

The bill requires the Commissioner to appoint an Advisory Committee consisting of not less than 3 nor more than 15 persons to advise him concerning the formulation of policies and the execution of functions under this bill.

Moreover, the Commissioner is directed to make a continuing study of the feasibility of turning the entire flood insurance program over to the private insurance industry.

The Commissioner, in his annual report for the year ending December 31, 1961, is required to express his opinion as to the advisability of withdrawing, in whole or in part, Federal financial support for flood insurance.

The Commissioner is further directed to make continuing studies of the availability of privately issued insurance against risks from other natural disasters (such as earthquake, mine subsidence, and hurricanes), if it is found that such insurance is not generally and practically available from public or private insurance sources and to study the desirability of extending the Government flood insurance program to cover such additional perils.

Need for Legislation

The damage caused by flood is a national problem calling for national solution. It is not confined to any particular State or group of States. Exactly where flood damage may strike in a given year is a matter of conjecture, but statistics show that flood losses will occur annually somewhere within the United States. Estimates of average annual flood damage compiled by the United States Weather Bureau, the Army Corps of Engineers, and the Department of Agriculture range between $326 million and $545 million at 1950–52 prices.

The amount of flood damage in any particular year rarely approximates the average amount of flood damage over a long span of years. The United States Weather Bureau statistics show a range (at 1950–51 prices) from $6.3 million in 1931 to $1 billion in 1951 as against an annual average of $326 million. In both 1954 and 1955, flood damage exceeded $800 million.

Testimony given the committee was unanimous in concluding that flood insurance against damage to real property is not now generally available from either private or public sources. Flood damage hits particularly hard (1) those homeowners who lose their homes in a flood but still owe the mortgage debt on such homes, and (2) businessmen whose credit is so impaired by flood loss as to discourage them from resuming business operations. Federal disaster grants are not now generally available for individuals as such. Only such Federal loan programs as emergency loans to farmers and stockmen by the Agriculture Department and loans to disaster victims by the Small Business Administration are available to help individual flood victims. The Federal Housing Administration can insure a mortgage up to $7,000 to help replace a home destroyed by a major disaster; but the beneficiary must show ability to repay the mortgage loan. A man

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who has just lost the security on a prior mortgage—retaining only the indebtedness—is often unable to make such a showing. Proceeds of Federal crop insurance help reimburse flood loss to crops; but the program is limited to some 800 out of 3,000 counties, and further limited to certain crops in the 800 counties.

Individual disaster victims must turn to charity for relief, if their own assets or ability to borrow are not sufficient to rehabilitate them. Presently the American National Red Cross grants limited charitable relief to persons on the basis of their need; sometimes to the extent of making gifts of money to rebuild destroyed homes and small businesses.

Mortgage and business debtors work out as best they can their obligations to creditors after a flood. Flood losses show up in Federal income tax returns as deductions for loss or bad debts, or in a decrease or lack of taxable income. Such losses significantly decrease the Federal tax revenues.

The Federal Government has long assumed a major share of responsibility for flood control (viz: the Flood Control Act of 1936). However, the testimony of the Corps of Engineers indicates that it will take about 22 years at the present rate of appropriations to complete the remaining projects now authorized in the flood control program. Moreover, the 1936 act limits flood protective works to structures from which the demonstrable benefits will exceed the cost.

There is a specific precedent for a flood insurance program in the Federal crop insurance program. The Congress has already enacted into law several programs incorporating insurance principles or related indemnity principles, involving the payment of fees or charges by those benefiting from the programs. These include (1) aviation war damage insurance; (2) bank deposit insurance; (3) Export-Import Bank tangible property insurance; (4) Government employees insurance; (5) housing mortgage insurance; (6) maritime cargo war time insurance; (7) maritime vessel mortgage insurance; (8) Mutual Security Act investment guarantee program; (9) old age and survivors' insurance; (10) postal insurance; (11) savings and loan account insurance; (12) unemployment insurance; (13) veterans' life insurance; (14) V-loans guaranteed by Federal Government agencies; and (15) war damage insurance. From this list it is apparent that the insurance device has already gained wide usage in Federal programs.

Testimony given by representatives of the insurance industry supports the conclusion that there are no insuperable obstacles in the way of achieving a workable program of flood insurance such as that authorized by the bill. Every representative of the industry who testified affirmed that the insurance industry is ready to cooperate with the Federal Government by, among other things, making the services of skilled actuaries available in order to aid in achieving the most efficient possible program under the terms of this bill.

Conclusions

Areas of endeavor exist wherein government can render for its citizens services that they, individually or in organizations, cannot economically perform for themselves. Flood insurance is such an area. The homeowner or tenant of moderate means can ill afford to sustain flood losses that wipe out at a single blow all his accumulated assets. In a still more hapless plight is the homeowner whose home and belongings are washed away by flood, but whose mortgage debt

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on the home remains due and unpaid. The proprietor of a small commercial or industrial establishment may be thrust overnight from solvency to bankruptcy due to damage inflicted by waters.

The determination of the businessman to resume his business activities with its resulting jobs for citizens and tax income for public bodies would be immensely heightened by insurance against flood loss. The ability of the flood-victimized homeowner to repair or rebuild his home and generally to recover from the blow would be immeasurably enhanced if he had such insurance.

The homeowner is forced to seek charity. The businessman must turn to lending institutions willing to rely on his character and managerial ability as assurance for repayment of any loan extended to him, at a time when the physical assets of his business enterprise have been seriously damaged or destroyed by floodwaters. Even where available, credit is not as satisfactory a solution as insurance proceeds received as a matter of right.

The committee reported this bill by unanimous vote. It sincerely urges the Senate to promote the general welfare of the United States by authorizing a program whereby our citizens, in order to guard against the risk of catastrophic loss by flood, may join together in a self-help pool, with the supporting hand of the Federal Government in the background only to the extent monetary support proves to be needed for the program.

Description of Bill

FEDERAL FLOOD INSURANCE ADMINISTRATION

The bill creates a constituent agency within the Housing and Home Finance Agency to be known as the Federal Flood Insurance Administration. This will be headed by a Commissioner appointed by the President, subject to confirmation by the Senate. Operating policy control is vested in the Commissioner but the Housing and Home Finance Administrator will be responsible for the general supervision of FFIA and for coordination of its functions with those of other agencies in the HHFA. In order to avoid duplication of facilities, the Housing and Home Finance Administrator is authorized to provide such administrative services to FFIA as he deems practicable. FFIA is made subject to the Government Corporation Control Act, giving the regular Appropriations Committees general control over the size of the operating budget of FFIA. The Commissioner is required to maintain a set of accounts to be audited annually by the Government Accounting Office. The Commissioner's decisions on such financial transactions as the issuing of insurance policies, the making of reinsurance agreements, and the approval of vouchers will be final and conclusive upon all Federal officers.

These provisions make it clear that operating policy control of FFIA will rest with the Commissioner who, under the terms of the bill, will have the major responsibility of devising policies and procedures designed to result in a workable program. The Housing and Home Finance Agency has been selected as the agency in which overall supervision of this program will be vested because it already has gained considerable experience in the field of insurance due to its operations in the insuring of home mortgages, and the insuring of homes against flood damage is expected to constitute a major segment of the program authorized by this bill.

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AUTHORITY TO INSURE AND REINSURE

This bill authorizes the Commissioner to provide Federal assistance for flood insurance by issuing direct Federal insurance policies or by reinsuring policies issued by private or other public agencies against the peril of flood. Under the provisions of the bill, however, the direct Federal insurance program may contain a limited subsidy factor which is not provided for in connection with the reinsurance program. It is the hope of your committee that private insurance organizations will see fit to enter the field of flood insurance with the aid of a Federal reinsurance program. However, all testimony received by your committee's Subcommittee on Securities indicates a hesitancy on the part of private insurance companies to enter this field even with the support of Federal reinsurance. Consequently, in order to assure that the desired protection will actually become available, the bill authorizes a program of direct Federal insurance against the peril of flood. Even in this sphere the bill requires the use of private organizations authorized to engage in the insurance business in the marketing of policies and in the adjustment of claims made under such policies. The bill contemplates that reasonable compensation may be paid for such services and facilities. Since the direct Federal insurance program under the bill seems likely to be most used in the early stages of administering this legislation, this report proceeds to discuss the provisions applicable to direct Federal insurance.

ESTIMATED RATES AND FEES

The Commissioner is directed to establish a schedule of estimated rates for insurance offered under this bill. This schedule will be computed on the basis of the risks involved; the estimated rates will be uniform for similar risks within a given class of property; and estimated rates will be fixed at levels that would, in the Commissioner's judgment, be adequate, if collected, to produce sufficient proceeds over a reasonable period of years to pay all claims for losses. The schedule of estimated rates is not to include any factor for payment of Federal administrative expenses under this bill; these are to be paid out of directly appropriated funds. Neither is it intended that the schedule of estimated rates will include any factor of profit to be realized from the program.

Once established, this schedule of estimated rates shall be used by the Commissioner as a ceiling from which to compute a schedule of fees the purchasers of flood insurance policies under this bill will be required to pay. While not conclusive, all testimony received by your committee's Subcommittee on Securities leads to the belief that a schedule of estimated rates based entirely on so-called actuarial considerations may prove to be too high to serve as an adequate basis for providing flood insurance protection to prospective purchasers. Therefore, the bill provides that the Commissioner shall establish a schedule of fees to be paid by purchasers of the insurance designed to provide insurance protection at reasonable costs and to achieve marketability of the insurance policies, provided that no insurance policy can be issued for a fee lower than 60 percent of the corresponding estimated rate for insurance provided by that policy. In effect, this difference between the estimated rate and the fee may be referred to as the "subsidy." While under the bill this can never be larger than 40

percent of the estimated rate, it need not be that large. The bill expressly authorizes the Commissioner to decrease the percentage of this subsidy by establishing classifications of fees based on (1) the use of the insured property; (2) the availability of insurance for such property from private sources; and (3) the insured's ability to self-insure or reinsure; provided that all fees must be uniform for similar risks within a given classification of property. Under this provision it is possible for the Commissioner to grant a greater subsidy for one classification of property, such as homes, than for another classification of property, such as industries. He may also base classifications on the availability of insurance from private sources, as in the field of personal property flood insurance. Finally, he may take into consideration the ability of the prospective insured to self-insure or reciprocally reinsure its flood risks.

If this program is to become workable, the schedule of fees charged persons purchasing the insurance must be fixed at levels that will make it possible for the various classes of prospective buyers to acquire the insurance and thus make the program effective.

Upon the sale of insurance policies, the Commissioner is to pay into a disaster insurance fund the amount of the subsidies applicable to such policies.

The fees for reinsurance offered under the provisions of this bill are to be established from time to time by the Commissioner through a process of negotiation with insurance companies seeking reinsurance. These fees under the bill will contain no admitted subsidy in the sense in which that term has been used in the preceding paragraph. The reinsurance fees are to be based on the consideration of the risks involved and are to be adequate, in the Commissioner's judgment, to produce sufficient proceeds over a reasonable period of years to pay all claims for losses covered by the reinsurance agreements. The fees are not to include any loading for administrative expenses for the Federal Government under this bill. Neither does the bill make any provision for considering a profit factor in establishing such reinsurance fees.

No subsidy was provided in the case of reinsurance fees lest the available insurance authorization under the bill be exhausted by use in the reinsurance program, leaving no authorization available to provide for direct Federal insurance in those areas where private companies do not choose to write flood insurance.

Administrative expenses of the program are excluded from the computation of insurance and reinsurance fees because it is believed this arrangement will make it possible better to judge the feasibility of writing flood insurance or reinsurance as a commercial venture. The amounts and methods of accounting for administrative expenses would obviously differ in a Federal program and in a privately operated program.

POLICY LIMITATIONS

Under the bill the outstanding face amount of insurance issued by the Commissioner cannot exceed $250,000 per person, and in no event can the Commissioner issue more than $10,000 face amount of Federal flood insurance on any dwelling unit, including any structures and personal property connected with it. In view of the bill's limitation on the total amount of insurance and reinsurance which can be written under it, it is deemed necessary to fix some limit on the amount of insurance that can be purchased by any one person under the pro-

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visions of this bill. "Person" has been defined in the bill to mean an individual or group of individuals, a corporation, a partnership, an association or any other organized group of persons, including State and local governments and agencies thereof. In the absence of a statutory limitation, it is possible that corporations and governments might purchase Federal flood insurance in such large amounts as to leave little of the total authorization available for insurance of the property owned by individuals. Your committee reached the conclusion that the limitation specified by the bill will provide a fair measure of protection to a large number of persons, even if it will not provide complete protection from flood loss for all persons, corporations and government units desiring to purchase Federal flood insurance. The bill permits the Commissioner to issue appropriate regulations regarding insurance available under the bill to joint owners and to subsidiary and affiliated corporations. Such a provision is deemed necessary to enforce the effectiveness of the per person limit placed on insurance policies issued under this bill.

PROGRAM LIMITATIONS

The bill provides that exposure of the Government to loss on insurance and reinsurance policies outstanding under this program cannot be more than $3 billion (or $5 billion with the approval of the President), plus an amount equal to the fees collected for insurance or reinsurance under the bill. As claims are approved under insurance policies and reinsurance agreements issued under the bill, the amount of such claims will serve to reduce the total authorization above by a corresponding amount.

To the extent that this program successfully approaches true insurance principles, the face amount of insurance policies issued and reinsurance agreements entered into under this bill should be many times greater than the amount of losses expected to be incurred. Admittedly, this is largely an untried field of insurance. However, in property damage insurance coverage provided by private insurance companies, experience has shown that even in years of comparatively heavy losses, premiums alone exceed losses and loss expenses incurred on a national basis by almost a 2-to-1 ratio. Information obtained by your committee indicates the following relationship among total assets, total premiums earned, and losses and loss expenses incurred for all stock insurance companies operating in the property damage field over the last 5-year period. These companies reportedly write about 80 percent in volume of the property damage insurance written in the United States:

Capital stock insurance companies 1950–54, inclusive

Year	Assets	Premiums earned	Losses and loss expenses incurred
1954	$8,957,123,499	$3,316,167,119	$1,665,454,932
1953	7,604,680,413	3,154,762,724	1,720,885,607
1952	7,467,791,124	2,980,361,944	1,591,851,968
1951	6,736,331,654	2,706,165,421	1,477,304,686
1950	6,314,130,184	2,449,913,805	1,265,405,737

It should be noted that these figures do not include the total face value of policies written by these stock companies. Under insurance policies resulting in the above listed earned premiums, insurance practice relies on the premium rate being adequate to more than pay any losses incurred under policies issued. In fact, your committee's Subcommittee on Securities was informed by representatives of the insurance industry that there are no reliable estimates of the extent of total exposure of insurance companies under property damage insurance policies written by them.

It is, therefore, the expectation and hope of your committee that the total loss experienced by the Government in this program will be just a small fraction of the face amount of the insurance written under it.

While a program of $5 billion worth of insurance may at first glance seem large in amount, its comparative minuteness can be readily seen by comparing it with private insurance practice. Your committee's Subcommittee on Securities received testimony to the effect that a single insurance company has outstanding about $20 billion worth of insurance against perils included in extended coverage endorsements, the principal of which is windstorm, compared to total company assets of about $1¼ billion. However, in the opinion of your committee, the comparatively small program authorized by this bill will provide a means of running a pilot program in the flood-insurance field in order to test its feasibility.

LOSS DEDUCTIBLE PROVISION

In an effort to reduce "nuisance" claims, keep the cost of administering the program low, and provide the insured an incentive to protect the insured property against flood damage, the bill requires a minimum loss deductible clause in each insurance policy issued by the Commissioner that will relieve the Government from any liability for paying the first $100 of a proved and approved claim of loss, plus 5 percent of the remainder of such claim. The bill further authorizes the Commissioner to increase either the amount or the percent, or both, upon the issuance of an insurance policy, taking into consideration the class of risk involved.

CLAIMS PAYMENT

The Commissioner is instructed to arrange for prompt adjustment and payment of valid claims for losses covered by insurance and reinsurance in the bill. Claims are exempted from attachment, levy, garnishment, or other legal process before payment to the insured on a Federal insurance policy or to the insurer under a Federal reinsurance agreement. Moreover, any such claim is excused from reduction on account of indebtedness of the insured or his estate, or the insurer, as the case may be, to the United States, except for United States claims arising under this bill. This provision is designed to assure that the insured will receive the benefit of flood insurance proceeds and that the ceding company under a reinsurance agreement will be assured of receiving the entire portion of any claim approved under such agreement.

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JUDICIAL REVIEW

The bill provides that if a claim made by virtue of any insurance policy issued or reinsurance agreement made under the bill is disallowed by the Commissioner in whole or in part, the claimant may institute a legal action against the Commissioner in the United States district court in which a major portion in terms of value of the insured property is located. Such action may be instituted at any time within one year after the date upon which the claimant receives from the Commissioner written notice of disallowance or partial disallowance of the claim. The bill makes adequate provision to empower all United States district courts to hear and determine such actions.

REINSURANCE

The bill authorizes the Commissioner to exercise careful control over any insurance policy receiving the benefit of Federal reinsurance under the bill. The premium rate and the terms and conditions of any such policy are made subject to the Commissioner's approval.

The Commissioner is required to use his best efforts to try to encourage private companies to insure that portion of flood loss in excess of the policy limit specified by direct Federal flood insurance. In order to encourage the entry of private companies into this field, the Commissioner may offer a suitable program of Federal reinsurance within the limitations prescribed by the bill. In addition, the Commissioner is authorized to encourage, through Federal reinsurance, the issuance by private insurance companies of policies insuring generally against flood loss.

These provisions offer private insurance companies an opportunity to enter the flood-insurance field with the aid of Federal reinsurance.

NONDUPLICATION OF AVAILABLE INSURANCE

Elsewhere the bill expressly provides that neither insurance nor reinsurance can be issued under the bill covering risks against which insurance is available on reasonable terms from other public or private sources.

The bill also requires that the annual report of the Housing and Home Finance Administrator for the year ending December 31, 1961, must contain an express opinion of the Commissioner, supported by pertinent findings, concerning the advisability of withdrawing, in whole or in part, Federal assistance in the flood insurance field, keeping in mind the desirability of offering flood-insurance protection. In the event the Commissioner's opinion recommends withdrawal of entire or partial Federal financial support for the flood-insurance program, it is to be accompanied by appropriate legislative recommendations. In the light of conditions then existing, the Congress can consider in the public interest the procedures to be adopted for terminating the Federal flood-insurance program. These provisions insure the insurance industry that at the end of 1961 the Commissioner must come to grips with the problem of determining whether it is necessary for the Federal Government to remain in the flood-insurance field either as a direct insurer or as a source of reinsurance.

The bill requires the Commissioner to undertake a continuing study of private insurance company participation in the programs authorized

by the bill, in order that flood insurance can be provided by policies issued by private insurance companies with the aid of Federal reinsurance. The bill also requires the Commissioner to undertake a continuing study of the feasibility of having private insurance companies take over the insurance programs authorized by the bill, either with or without some form of Federal financial support.

In view of these provisions, it is the hope of your committee that it has adequately safeguarded the legitimate interests of private insurance companies and has done all within its practical power to encourage their entry into the field of flood insurance.

ZONING

In an effort to minimize the extent of claims for insured losses filed with the Commissioner, the bill contains two specific zoning provisions. The first of these prohibits the issuance of insurance or reinsurance under the bill on any property declared by an appropriate public body to be in violation of State or local flood-zoning laws. The second provides that after June 30, 1958, no insurance or reinsurance shall be issued under the bill in any geographical location unless an appropriate public body shall have adopted and shall keep in effect such flood-zoning restrictions as the Commissioner may deem necessary to reduce, within practicable limits, flood damage within such location.

Taken together, these two provisions should serve as an adequate incentive for States to do what is within their power to minimize flood damage. In the opinion of your committee, it was unnecessary, to serve this purpose, to include a provision, as was proposed by the administration, requiring the State to pay a part of the premium due on each insurance policy. The requirement for such a monetary contribution raised so many constitutional, legal, and financial problems that, in the opinion of your committee, such a requirement would prejudice the workability of the entire flood-insurance program.

COORDINATION

The bill contemplates that the Commissioner will consult with other Federal, State, and local government agencies having responsibilities in the fields of land use, flood control, flood zoning, and flood-damage prevention in order to assure that the insurance and reinsurance programs carried on under this bill are consistent with the programs of such agencies. The bill directs Federal agencies having jurisdiction over existing or proposed flood-control works to cooperate with the Commissioner in coordinating their respective programs wherever the activities of the Commissioner may affect such flood-control works. Moreover, the bill instructs the Secretary of Agriculture and the Commissioner to coordinate the administration of their respective programs affecting the protection of agricultural commodities against flood damage. Through the Federal Crop Insurance Corporation, the Department of Agriculture presently offers multiple-risk-insurance protection for certain crops in approximately 800 of the 3,000 counties in the United States. For the most part FCIC insurance protects the crops while they are still in the ground but ceases to cover them when they are removed from the ground. Under the broad authority granted the Commissioner under this bill, he would have the power to insure crops against flood damage

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whether they were located in the ground or had been removed from the ground, save for the provision prohibiting the Commissioner from issuing insurance covering risks against which insurance is available upon reasonable terms from other public or private sources. In order to avoid unnecessary duplication in the field of crop insurance, the bill contemplates that the Secretary of Agriculture and the Commissioner will coordinate their respective programs affecting this field.

The bill expressly authorizes the Commissioner to supply, receive from, and exchange with other Federal, State, and local agencies and private insurance or reinsurance organizations information useful in administering the programs authorized by the bill.

As previously noted, the bill also requires the Commissioner to use to the maximum practical extent the facilities and services of private organizations and persons authorized to engage in the insurance business under the laws of any State and to arrange for payment of reasonable compensation for such facilities and services. If the administrative practice followed in the case of the War Damage Corporation is adapted to this program, it will make unnecessary the creation of a vast Federal agency staffed by numerous employees for the purpose of carrying out the program authorized under the bill. Existing organizations skilled in the writing of insurance and in recommending adjustment of claims filed under insurance policies are able, and seem to be willing, to supply their services and facilities to the Federal Government in order to make these programs function efficiently. Representatives of these organizations have indicated to your committee's Subcommittee on Securities that for the most part the organizations would be willing to supply such facilities and services to the Government on a cost basis.

FINANCING

The Federal Flood Insurance Administration (created within HHFA to handle the programs authorized under this bill) is required by the bill to obtain its administrative expense moneys from direct appropriations made by the Congress. All other funds for operation of FFIA will be obtained from (1) fees collected from purchasers of insurance policies and organizations making reinsurance agreements; (2) earnings on the investment and reinvestment of such fees; (3) any salvage proceeds received in the course of operations under the bill; and (4) funds borrowed from the United States Treasury. In the beginning it will presumably be necessary for the Commissioner to borrow funds from the United States Treasury in order to pay the admitted subsidy portion of the insurance premiums.

The bill places a top limit of one-half billion dollars on the outstanding amount of money that the Commissioner may borrow from the Treasury. However, it permits the President to grant approval to the Commissioner's borrowing any greater amount from the United States Treasury. The indebtedness of the Commissioner incurred in these borrowings will be evidenced by notes or other obligations in form and context satisfactory to the Commissioner and approved by the Secretary of the Treasury. These obligations will bear interest at a rate of interest determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States of comparable maturities

as of the last day of the month preceding the issuance of such obligations. The Secretary is empowered to treat this as a public debt transaction and may in turn sell any obligations acquired by him from the Commissioner.

BOOKKEEPING

The Commissioner is authorized to establish two general funds to be known as the disaster insurance fund and the disaster reinsurance fund, respectively. Proceeds received in connection with Federal flood insurance, and losses and nonadministrative expenses required to be paid in connection with such insurance will be handled through the disaster insurance fund. Similar proceeds and expenditures in connection with the reinsurance authorized by the bill will be handled through the disaster reinsurance fund. It is within the Commissioner's discretion to determine how much of the money borrowed from the Secretary of the Treasury will be deposited in each of the respective funds. Moneys in both funds may be invested in United States obligations or in obligations guaranteed as to principal and interest by the United States. The investment obligations may be sold and the proceeds derived from their sale may be reinvested in similar obligations, if deemed advisable by the Commissioner.

Moneys in both funds may be used to repay to the Secretary of the Treasury sums borrowed from him in accordance with the bill.

ADVISORY COMMITTEE

In view of the experimental nature of this program, your committee deems it advisable that the Commissioner have available the services of an advisory committee composed of members familiar with insurance or reinsurance problems. The bill, therefore, requires the Commissioner to appoint such an advisory committee consisting of not less than 3 nor more than 15 persons to advise him concerning the formulation of policies and the execution of functions under this bill.

DURATION OF PROGRAM

It has been previously noted that the bill requires the Commissioner in the annual report for the year ending December 31, 1961, to express his opinion as to the advisability of withdrawing, in whole or in part, Federal financial support for flood insurance. In order that the Congress may be well informed concerning the development of the programs authorized by this bill, it requires the annual report of the Housing and Home Finance Administrator to cover comprehensively the operation of programs authorized under the bill, the status and result of studies authorized under section 15 of the bill, and recommendations for legislative changes deemed desirable by the Commissioner to improve the operation of programs authorized under the bill. Under the cirumstances, the bill contemplates a continuing program of Federal flood insurance and reinsurance unless and until it is found feasible to transfer the operation of the programs to private industry. As indicated in the staff study, the amount of flood damage occurring in any given year is apt to vary considerably from the average annual damage computed over a long span of years. Consequently, the longer the period of operations under this bill, the more

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valuable the experience gained in such operations will prove to be as an indicator of the feasibility of handling these programs as private commercial ventures. Therefore, no fixed termination date is provided by the bill.

CONTROL OF GOVERNMENT EXPOSURE TO FINANCIAL LIABILITY

The total amount of flood-insurance exposure that the Federal Government can incur is limited by the provisions in the bill. Toward this amount, fees collected from insurance purchasers, investment earnings on such fees, and salvage income from the program are all available for use. Apart from insured losses, administrative expenses constitute the only other potential cost to the Government in a flood-insurance program. The bill makes these dependent upon congressional appropriations in the usual method, affording the regular Appropriations Committees of the Congress ample opportunity to control Federal expenditures in this respect. Additional administrative authority is granted in the bill to pattern this program after private property damage insurance programs, where the amount of insurance exposure accepted by the companies exceeds by many times the insured losses incurred by such companies. Higher risks must pay correspondingly higher fees for protection under the flood-insurance program envisioned in this bill. Statutory limits are placed on the amount of Federal flood insurance available to any person, corporation, or public body. Minimum loss deductible provisions are required by statute. The agency administering the program may also require minimum coinsurance provisions similar to the practice followed by private insurance companies; so that any insured failing to meet the coinsurance minimum will receive only a partial recovery of loss in the event of a partial loss inflicted on the property insured. Under the bill the Commissioner in charge of the program will first compute a schedule of estimated rates for insurance which, if collected over a reasonable period, would be sufficient to pay insured losses. Lest this result in a schedule at too high a level to permit sale of policies, the Commissioner is authorized to fix a lower schedule of fees to be charged to the insured. However, under the bill no insurance policy can be issued for a fee less than 60 percent of the corresponding estimated rate. This provision serves as an added limitation on the amount of subsidy to which the Government will be required to expose itself to under the act. Provisions are included to discourage unwise use of floodable areas. All these features serve to control the total financial liability to which the Federal Government would be exposed by this program.

SCOPE OF PROGRAM

The bill authorizes coverage of real and personal property owned privately or by public bodies against loss due to flood as defined in the bill. The term "flood" is broadly defined to include the water component of any severe storm as well as rising waters and abnormally high tidal water, and the Commissioner is authorized to assign such other specific meaning to the generic term "flood" as he may prescribe by regulation. Specifically, the bill defines "flood" to include "any flood, tidal wave, wave wash or other abnormally high tidal water,

deluge, or the water component of any hurricane or other severe storm, landslide due to excess moisture" and such other meaning as the Commissioner may prescribe by regulation.

It is in these types of natural perils that the lack of private insurance programs is most notable. This is particularly true in the instance of damage to real property. However, there are many kinds of personal property for which flood insurance is not presently available, despite coverage offered by private insurance companies in such fields as motor vehicles, personal property "floaters," merchandise in transit or on consignment, cargo, tugs, and warehoused goods.

The bill authorizes insurance coverage against flood damage for property located in the United States, its Territories, possessions and the Commonwealth of Puerto Rico.

It will be noted that this bill provides authority for operating insurance and reinsurance programs only against the peril of flood as defined in the bill. However, in recognition of the desirability of studying the feasibility of extending insurance coverage to certain other types of natural disaster, the bill directs the Commissioner to undertake a continuing study of the practicality of extending such coverage to any one or more natural disaster perils other than floods, against which insurance protection is not generally or practically available in all geographical locations from other public or private sources. The Commissioner is directed to continue these studies for the period during which such insurance protection is not available. It is not the intention of your committee that the Commissioner arrange for studies of insurance against natural disaster perils in those circumstances where such insurance is available from other public or private sources. If, however, any such insurance, having been written by public or private sources, ceases to be available in any geographical location, the Commissioner is expected to study the feasibility of restoring the availability of insurance protection to that location with the aid of Federal direct insurance or reinsurance.

Noncompetitive Nature of Program

Under the express provisions of this bill, no insurance can be written by the Federal Government covering risks against which insurance is available on reasonable terms from other public or private sources. This program is not intended to compete with private insurance companies. It is only because such companies will not venture into the general field of flood insurance that legislation of the type proposed is required at all. The bill also requires the Federal Government to encourage the entry of private insurance companies into this field by offering Federal reinsurance within the limits outlined in the proposed legislation.

OPINION OF INSURANCE REPRESENTATIVES

Testimony given by representatives of the insurance industry may be summarized by stating that after careful and thorough study of the problems involved, private insurance companies do not believe it feasible to write flood insurance generally as a commercial venture for profit. The reasoning leading to their conclusion is stated succinctly in the May 1952 Report on Floods and Flood Damage issued

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by the Insurance Executives Association (now identified as the American Insurance Association):

> Because of the virtual certainty of the loss, its catastrophic nature, and the impossibility of making this line of insurance selfsupporting due to refusal of the public to purchase such insurance at the rates which would have to be charged to pay annual losses, companies generally could not prudently engage in this field of underwriting.

This is not to say, however, that the Federal Government should not undertake a program designed to reimburse, at least in part, property damage caused by flood, using fees paid by the potential victims to aid in making this reimbursement. Such a program is authorized by this bill.

The ability of the Federal Government to undertake such a program, in contrast to the apparent inability of private insurance companies to do so, may be accounted for by the following factors:

(1) The Government need not seek a profit from the program;

(2) The Government already suffers tax losses from flood damage that would be decreased if such damage was reimbursed;

(3) As a public service, the Government can provide such subsidy as may prove to be needed to make the program work, especially by lowering fees charged to levels making possible the purchase of protection by potential flood victims; and

(4) Government credit is ample to enable it to meet a sudden catastrophic insured flood loss that would bankrupt a private insurance company; and future program fees collected would become available to repay funds raised through use of Government credit.

In testimony given to your committee's Subcommittee on Securities, the chairman of a special committee to study floods and flood damage appointed by the American Insurance Association (successor organization to that which issued the May 1952 report quoted in part above) on February 21, 1956, replied to a question as to whether insurance companies would object to the Federal Government engaging in flood insurance against property damage. He said:

> I would not want to quite say, Senator, that we would have no objection, because we recognize that the same potential inheres in a flood insurance program, so-called, as to future possible encroachment on business that we do write as inhered, say, when the crop-insurance program was conceived. * * * but that, having decided that we cannot as private industry engage in flood insurance as such, we have forfeited our right to object to the Government doing it if Congress elected to embark on a program (pt. 2, Federal Disaster Insurance hearings, p. 1059).

The witness stated that the American Insurance Association, for which he was testifying, was composed of companies that write about 80 percent of the fire insurance written by capital stock fire insurance companies and that the latter in turn write over 80 percent of the total of fire insurance written in this country, its Territories, and possessions. These are the companies which write such limited flood insurance as is available, and would be those most likely to expand

in the flood insurance field if this were decided to be done by private insurance companies. The reliable testimony of one speaking for such an association therefore deserves great weight.

The representative of the American Mutual Alliance, composed of 118 mutual property insurance companies in the fire and casualty business, writing insurance programs on an annual basis in excess of a billion dollars a year, testified to your committee's Subcommittee on Securities on February 21, 1956, that—

> * * * our companies * * * are very much concerned with this problem, and have been studying it, and do not quite share the extreme pessimism with respect to the possibilities of insurance which other witnesses have evidenced. However, we must admit that while we think this is a challenge to the insurance business, we have no immediate solution to the challenge (pt. 2, Federal Disaster Insurance Hearings, supra, p. 1117).

He continued:

> In my previous testimony and again today I point out that we would like to see private insurance develop an interest and an ability to operate in this field and suggest that if it should be decided that some form of Government insurance is desirable that that be developed and situated so that eventually private insurance might operate within the area. * * * And again we offer the services of our companies and their forces in the development of any program that the Congress should see fit to enact, either in the placement of insurance or in the handling of claims (pt. 2, Federal Disaster Insurance Hearings, supra, p. 1119).

Speaking for the Associated Factory Mutual Fire Insurance Companies, consisting of eight mutual companies specializing in insuring industrial property, but also writing insurance against mercantile and institutional risks, their representative on February 19, 1956, told your committee's Subcommittee on Securities:

> We are still studying the possibility of making flood insurance available to factory mutual policyholders. Our research has not established whether or not this hazard is insurable for the plants we currently insure, even though proper underwriting safeguards are incorporated in the plan. * * * Obviously, any program of flood insurance, whether public, private, or a combination of the two, must be actuarily (sic) sound. Any plan which simply provides Government relief for flood victims should not be disguised as "insurance." * * * Any program of flood insurance should be designed to use to the greatest extent possible present insurance facilities. In common with the remainder of the private insurance industry, we would be glad to cooperate in every way in the administration of any program which Congress may enact (pt. 2, Federal Disaster Insurance Hearings, supra, pp. 1020 and 1021).

The National Association of Insurance Agents, an organization of over 32,000 member agencies producing and servicing property and casualty insurance in every section of the United States and its

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Territories, filed a letter dated February 20, 1956, with your committee's Subcommittee on Securities. It is included in part 2 of the Federal Disaster Insurance hearings, supra, at page 1213. Noting the members' and officers' acute awareness of the suffering and misery caused by recent floods throughout the various sections of the United States, the letter refers to the association's historic position against the entry of Government into fields that impinge on the rightful activities of private business. It continues:

> While we would like at this time to reiterate our historic position in this regard, we nevertheless realize that you are attempting to solve a problem of unusual perplexity, difficulty, and urgency.
>
> Our underwriters, the private insurance companies, after lengthy study have concluded that the writing of specific flood insurance is not commercially feasible. Largely because of this, the Congress is considering certain plans and proposals to establish a plan of indemnity to provide the citizens of the United States with some relief in the event they suffer damage from catastrophic floods.
>
> While this association of producers regrets the apparent need for the Government to consider entering this field, we wish to state that in the event Congress adopts a program of flood indemnification, we will be pledged to full cooperation, as we did in the war damage insurance program.

The National Association of Mutual Insurance Agents, through one of its officers, filed a statement for the record, which appears in part 2, Federal Disaster Insurance Hearings, supra, page 1105. That statement begins—

> Potential victims of disasters can and must be afforded some means of protection against catastrophic occurrences of natural and unforeseeable origin.

This is given as the conclusion of the 6,000 members of the association as expressed by its public committee on catastrophe insurance on December 15, 1955. The association believes—

> This major problem facing the Nation can be solved through the intelligent cooperation of American free private enterprise and the Government.

Recommending that insurance against catastrophic loss be included in all property policies, the association urges that reinsurance be afforded through a Government created corporation similar to the War Damage Corporation for hazards not presently covered by the insurance industry; a portion of such exposures to be assumed by the industry. The statement concludes—

> We, the National Association of Mutual Insurance Agents stand ready, willing, and anxious to lend a hand in solving these problems for the American public.

The foregoing is a summation of the testimony given by representatives of private enterprises that issue or service property insurance policies. In essence, they say that while they may not be happy about

the prospect, they will cooperate with the Federal Government if it decides to provide flood insurance in areas where it is not now offered by private insurance companies.

Section-by-Section Analysis of S. 3732

SHORT TITLE

Section 1 gives the bill the short title of "Federal Flood Insurance Act of 1956."

FINDINGS AND DECLARATION OF PURPOSE

Section 2 notes that flood insurance against property damage is not generally available from public or private sources; and presents the need for a Federal program in this field operating along the lines of direct Federal insurance or Federal reinsurance of policies issued by private insurance companies.

FEDERAL FLOOD INSURANCE ADMINISTRATION

Section 3 forms a new constituent agency within the Housing and Home Finance Agency. Named the Federal Flood Insurance Administration, it will be headed by a Commissioner appointed by the President and confirmed by the Senate. The Commissioner will control the operating policies of the Administration but the Housing and Home Finance Administrator will be responsible for its general supervision and coordination of its functions with other parts of HHFA. To avoid duplication of facilities, HHFA will provide administrative services to FFIA where practicable. The Government Corporation Control Act is made applicable to the new agency. The Commissioner is to maintain a system of accounts audited annually by GAO, but the Commissioner's decision on issuance of policies and reinsurance agreements and vouchers will be final and conclusive.

AUTHORITY TO INSURE AND REINSURE

Section 4 authorizes the Commissioner to insure and reinsure against loss resulting from damage to real or personal property due to flood within the United States, its Territories, and possessions. The property covered may be owned privately or by a State or local government. The Commissioner is authorized to prescribe the terms and conditions of such coverage. He is also authorized to establish coinsurance requirements.

ESTIMATED RATES AND FEES

Section 5 (a) contains the important provision setting forth the method of computing the fee which is to be paid by the insured for the protection authorized by this bill. It requires the Commissioner to compute a schedule of estimated rates for Federal insurance which, if collected, would be sufficient, over a reasonable period of years, to pay all insured losses. These rates need not include any amount for profit and could not include any administrative expenses of the program. However, the subsection does not require the Commissioner

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to collect the full amount of these rates from the insured. Using the estimated rates so computed as a basis, the subsection authorizes the Commissioner to fix a lower schedule of fees to be paid by the insured. This schedule of fees is to represent a reasonable cost for protection and is to be designed to achieve marketability of the policies. The fees are to be uniform for similar risks within a given classification of property. To limit the Government subsidy, the subsection expressly provides that no insurance policy shall be issued for a fee less than 60 percent of the corresponding estimated rate. The Commissioner may classify fees according to property use, the degree of availability of insurance from private sources, and the economic ability of the prospective insured to self-insure or to join in a reciprocal insurance arrangement involving a form of reinsurance.

Section 5 (b) authorizes the Commissioner to negotiate fees for reinsurance offered under the bill. These are to be sufficient over a reasonable period of years to pay all claims for losses under reinsurance agreements. They do not include any amount for administrative expenses and need not include any amount for profit. However, no express subsidy provision is written into this subsection similar to that provided in subsection (a) of section 5.

PROPERTY AND LOSS LIMITS

Section 6 empowers the Commissioner to determine the types and location of property covered by the programs under this bill, the nature and limits of loss and damage in any area, and other necessary matters.

RISK CLASSIFICATION

Section 7 authorizes the Commissioner to make appropriate regulations as to the classification, limitation, and rejection of risks.

POLICY AND PROGRAM LIMITS

Section 8 (a) limits the face amount per policy to $250,000 per person but provides that insurance per dwelling unit, including structures and personal property connected therewith, cannot exceed $10,000.

Section 8 (b) authorizes the Commissioner to issue regulations as to coverage available to joint owners and subsidiary and affiliated corporations.

Section 8 (c) requires a loss deductible clause in each policy issued by the Commissioner providing that the insured must bear the burden of the first $100 of an approved claim plus 5 percent of the remainder of the claim as a minimum. A larger amount or percentage may be specified by the Commissioner when the policy is issued, taking into consideration the class of risk involved.

Section 8 (d) places a limit on the Federal Government's total exposure under this bill. It provides that the face amount of policies and reinsurance agreements outstanding at any one time shall not exceed $3 billion (plus $2 billion if the President deems it necessary) minus all claims approved under policies and reinsurance agreements issued under the bill plus fees collected. The subsection expressly provides that the face amount of a policy is deemed to be the original amount minus claims approved under the policy.

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REINSURANCE REGULATORY AUTHORITY

Section 9 (a) grants the Commissioner power to issue regulations concerning reinsurance.

Section 9 (b) empowers him to approve the premium rate and terms and conditions of any policy reinsured.

Section 9 (c) empowers the Commissioner to encourage private insurance companies to issue flood-insurance policies covering that portion of the loss in excess of the limits authorized under Federal Government policies.

Section 9 (d) empowers the Commissioner to encourage the entry of private insurance companies into the flood-insurance field generally by offering a suitable Government reinsurance program.

NONDUPLICATION OF AVAILABLE INSURANCE

Section 10 (a) prohibits the issuance of insurance and reinsurance covering risks against which insurance is available on reasonable terms from other public or private sources.

Section 10 (b) prohibits the issuance of insurance or reinsurance on any property found by an appropriate public body to be in violation of State or local flood-zoning laws.

Section 10 (c) provides that after June 30, 1958, no insurance or reinsurance can be issued under the bill in any geographic location unless the appropriate public body shall have in force flood-zoning restrictions deemed necessary by the Commissioner.

USE OF OTHER PUBLIC AND PRIVATE FACILITIES

Section 11 (a) requires the Commissioner to use facilities of private organizations and persons authorized to engage in the insurance business and permits him to pay reasonable compensation for their services.

Section 11 (b) permits the Commissioner to use the services of other public agencies and pay reasonable compensation.

Section 11 (c) permits the Commissioner to exchange pertinent information with other public agencies and private insurance organizations.

Section 11 (d) authorizes the Commissioner to consult with other Federal, State, and local agencies to coordinate the insurance and reinsurance programs with flood-control and flood-zoning programs. The subsection directs Federal agencies controlling flood-control works to cooperate with the Commissioner. It further requires the Secretary of Agriculture and the Commissioner to coordinate their programs as they apply to farm commodities.

CLAIMS PAYMENT AND JUDICIAL REVIEW

Section 12 (a) directs the Commissioner to arrange for prompt payment of valid claims.

Section 12 (b) exempts claims from levy or other legal process.

Section 12 (c) grants a dissatisfied claimant recourse to the Federal district courts. He may begin suit within 1 year after receipt of notice of disallowance of a claim, in whole or in part.

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FUNDS AND TREASURY BORROWINGS

Section 13 (a) provides for creation of a disaster insurance fund and a disaster reinsurance fund.

Section 13 (b) requires deposit of fees collected into the appropriate fund.

Section 13 (c) allows investment of fund moneys in United States obligations.

Section 13 (d) requires deposit of salvage proceeds into the appropriate fund.

Section 13 (e) allows the Commissioner to borrow from the United States Treasury up to $500 million outstanding at any one time (or more if approved by the President). Borrowings are deposited into the disaster insurance fund or the disaster reinsurance fund in proportions deemed advisable by the Commissioner. Interest is due on amounts borrowed.

Section 13 (f) permits moneys in the respective funds to be used to pay approved claims and nonadministrative expenses, and to repay United States Treasury borrowings.

Section 13 (g) provides for payment of administrative expenses from appropriated funds.

ADVISORY COMMITTEE

Section 14 requires the Commissioner to appoint a 3- to 15-man advisory committee. It is to consist of persons familiar with insurance or reinsurance problems.

STUDIES

Section 15 (a) directs the Commissioner to undertake a study of the feasibility of extending insurance coverage to other types of natural disaster, if and while public or private insurance is not generally and practically available everywhere against such perils.

Section 15 (b) requires a study of private insurance company participation, to encourage flood-insurance coverage by private insurers with the aid of Federal reinsurance.

Section 15 (c) requires a study of the feasibility of having private insurance companies take over the programs authorized under this bill, either with or without Federal financial support.

ADDITIONAL FUNCTIONS

Section 16 grants the Commissioner powers needed to let his Administration function efficiently, similar to those usually possessed by corporations. These include powers (*a*) to sue and be used, (*b*) to enter contracts, (*c*) to acquire property, (*d*) to employ civil-service employees paid pursuant to the Classification Act of 1949, (*e*) to conduct research and investigations, (*f*) to issue rules and regulations, and (*g*) to exercise powers necessary to carry out the bill's purposes.

RESERVATION OF RIGHTS IN REAL ESTATE ACQUIRED

Section 17 provides that State or local criminal or civil jurisdiction over real property and the civil rights of its inhabitants shall not be taken away due to the Commissioner's acquisition of such property.

TAXATION

Section 18 provides that the bill shall not be construed so as to exempt real property from ad valorem local taxation merely because it is acquired by the Commissioner in connection with any claim payment under the bill.

ANNUAL REPORT

Section 19 requires the HHFA annual report to cover comprehensively the operation of programs under the bill and the status and result of studies under section 15. It is also to include any legislative recommendation the Commissioner may have. The 1961 report is to include the Commissioner's opinion and findings as to the advisability of withdrawing Federal aid, in whole or in part, from future policies issued after June 30, 1962. An affirmative opinion is to be accompanied by legislative recommendations.

DEFINITIONS

Section 20 contains terms deemed to require specific definition.

Section 20 (a) defines "flood" to include any flood, tidal wave, wave wash, or other abnormally high tidal water, deluge, or the water component of any hurricane or other severe storm, landslide due to excess moisture, and such other meanings as the Commissioner may by regulation prescribe.

Section 20 (b) defines "person" to mean an individual, a group of individuals, a corporation, a partnership, an association, or any other organized group of persons, including State and local governments and their agencies.

Section 20 (c) defines "United States" to mean all States, District of Columbia, the Territories, possessions, and Puerto Rico, whenever the term is used in a geographical sense.

Section 20 (d) defines "State" to include each State, District of Columbia, the Territories, possessions, and Puerto Rico.

SEPARABILITY PROVISION

Section 21 protects the entire bill from failure in the event part of it is held invalid.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

GOVERNMENT CORPORATION CONTROL ACT

(December 6, 1945, ch. 557, title I, section 101, 59 Stat. 597, as amended May 13, 1954, ch. 201, section 6, 68 Stat. 95)

* * * * * * *

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TITLE I—WHOLLY OWNED GOVERNMENT CORPORATIONS

SEC. 101. As used in this chapter the term "wholly owned Government corporation" means * * * Federal Housing Administration; *Federal Flood Insurance Administration;* Saint Lawrence Seaway Development Corporation; * * *.

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Calendar No. 1887

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1865

PROVIDING FOR PAYMENTS BY THE SECRETARY OF THE INTERIOR TO OWNERS OF NON-FEDERAL WATER-USE FACILITIES FOR HYDROELECTRIC POWER BENEFITS REALIZED BY THE UNITED STATES THEREFROM

APRIL 26, 1956.—Ordered to be printed

Mr. GOLDWATER, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1574]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1574), to provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom, and for other purposes, having considered the same report favorably thereon with an amendment in the nature of a substitute and recommend that the bill, as amended, do pass.

Strike all after the enacting clause and insert the following:

That subsection (f) of section 10 of the Federal Power Act (16 U. S. C., sec. 803 (f)) is hereby repealed: *Provided, however*, That nothing herein contained shall affect in any manner any rights or obligations with respect to payments and benefits conferred or received prior to the effective date hereof.

SEC. 2. That the following new section be added to the Federal Power Act:

"SEC. 31. (a) Whenever any hydroelectric power project owned by non-Federal interests is or will be benefited by the construction, operation, or maintenance of any reservoir or other water-use facility, the Commission, after notice to the owner or owners of any project so benefited, and after opportunity for hearing, shall determine and fix a reasonable and equitable annual charge to be paid to the owner of such facility furnishing such benefits, including the United States if it be the owner of the facility providing the benefit. The annual charges hereunder shall be such part of the fixed costs of the facility furnishing the benefit plus such part of the annual operating and maintenance costs of such facility, including land rentals and similar charges, as the Commission may deem equitable: *Provided*, That such annual charges shall not exceed the value of the benefits realized or received.

"(b) Whenever any hydroelectric power project owned by the United States is or will be benefited by the construction, operation, or maintenance of any non-Federal reservoir or other non-Federal water-use facility, the Commission, after notice to the Federal agency operating the project so benefited and the non-Federal owner of the facility furnishing the benefit, and after opportunity for hearing, shall

determine and fix a reasonable and equitable annual charge to be paid to the owner of such facility furnishing such benefits, such charge to be determined as provided in the preceding paragraph.

"(c) Annual charges assessed hereunder may be readjusted by the Commission at periods of not less than five years after notice and opportunity for hearing or readjusted at any time by the Commission as changed conditions may warrant after notice and opportunity for hearing.

"(d) All charges collected for the benefits provided by any facility owned by the United States shall constitute revenues of the facility providing the benefit and such revenues shall be disposed of in accordance with any provisions of law applicable thereto.

"(e) All parties affected hereunder (except any agency of the United States) shall bear a reasonable share of the cost to the Commission of making the determination, and all such parties shall pay their share of such cost, as fixed by the Commission, into the Treasury of the United States for credit to miscellaneous receipts: *Provided*, That in fixing the reasonable share of the cost each party is required to pay by this paragraph, the Commission shall apportion the total cost among all parties, including Federal agencies affected, notwithstanding the fact that no payment into the Treasury is required to be made by such Federal agencies.

"(f) Appropriations or other funds available for operation of the facility concerned shall be available to pay the annual or other charges that may be assessed against the United States pursuant to the provisions of this section.

"(g) No party receiving a notice under subsection (a) or (b) of this section shall be required to pay annual charges under this section for benefits received prior to the enactment of this section or be required to pay annual charges under this section for benefits received more than five years prior to the date on which the Commission gives notice to such party as provided in subsections (a) and (b) hereof; nor shall any party receiving a notice under subsection (a) of this section be required to pay to any non-Federal interest annual charges under this section if it is paying or is required to pay similar charges under State law."

Purpose of Amendment

The amendment, in the nature of a substitute would provide for the same sharing of headwater improvement costs by the federally constructed hydroelectrical developments that is now required of non-Federal projects under the Federal Power Act.

Description of Bill as Amended

S. 1574, as originally introduced, imposed upon the Secretary of the Interior certain responsibilities with respect to determining headwater benefits to be shared by Federal and non-Federal hydropower developments in the same river basin. Responsibility for making determinations with respect to headwater benefits received by non-Federal developments from Federal power operations is, under the Federal Power Act, now administered by the Federal Power Commission.

The committee takes the position that, in the light of congressional precedent beginning with the enactment of the Federal Power Act in 1921, the responsibility for any activities contemplated in connection with determining payments for headwater benefits should remain in the Federal Power Commission.

Public hearings were held by the Subcommittee on Irrigation and Reclamation on S. 1574 on May 27, June 29, and July 13, 1955. These hearings have been printed.

Conclusions of the Committee

The committee, with two dissenting votes, concludes that under all the circumstances the United States, as the owner and operator

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through various official agencies of the largest installations of hydroelectric power in the country, should be placed in the same category with respect to payment of headwater benefits as any other hydroelectric facility, public or private.

Upon final enactment of S. 1574, the Commission's procedures with respect to making headwater benefit determinations would remain substantially as is now the practice. Under the existing provisions of section 10 (f) of the Federal Power Act, the Commission makes substantially the same study with respect to Federal agencies as it would be required to do under the proposed amendment in S. 1574.

Headwater Benefit Determinations Made

The first headwater benefits determination made by the Commission involved two private utilities in California—the Southern California Edison Co. and the San Joaquin Light & Power Corp., then a subsidiary to Pacific Gas & Electric Co. This determination involved the Big Creek developments (project Nos. 67–120) of Southern California Edison Co. located on San Joaquin River which contribute materially to the power output of the Kerckhoff plant (project No. 96) of Pacific Gas & Electric Co. The first headwater benefits payment in this case covered the period 1923 to 1936, inclusive. This determination was made in 1939. Subsequent determinations of annual charges have been made by the Commission from time to time.

The Federal Allatoona project on Etowah River in Georgia went into operation in 1950. In fiscal year 1952 the Commission instituted a formal investigation involving this project and the downstream Lay, Mitchell, and Jordan projects of the Alabama Power Co. on the Coosa River. In 1955 the Commission made a determintaion of the payments to be made by the owner of the downstream plants for benefits received during the years 1950 through 1952.

The Commission made a determination in June 1950 that none of the non-Federal projects in the Columbia River Basin were benefited by an upstream reservoir in the Columbia River Basin during the years 1931 through 1948.

Formal Investigations Underway

Current formal headwater benefit investigations under section 10 (f) by the Commission are as follows:

A continuation of the formal investigation instituted in 1951 to determine headwater benefits for the years of 1953, 1954, and 1955 involving the Federal Allatoona project and three downstream projects owned by the Alabama Power Co., all of which are located in the Coosa River Basin, in Georgia and Alabama.

Investigation instituted in 1952, supplemented in 1956, is underway for the Columbia River Basin to cover the annual charges subsequent to 1948.

Investigation instituted in 1952 is continuing involving the Federal Canyon Ferry project and six downstream projects owned by the Montana Power Co., all of which are located on the Missouri River in Montana.

Investigation instituted in 1952 involving the Clark Hill project, owned by the United States, and certain downstream projects owned

by the South Carolina Electric & Gas Co., and the city of Augusta, Ga., all located on the Savannah River in Georgia and South Carolina.

Investigation instituted in 1954 involving the East Branch Reservoir, owned by the United States, and the downstream Piney project owned by the Pennsylvania Electric Co., all located on the Clarion River in Pennsylvania.

Investigation instituted in 1953 involving the Blakely Mountain project, under construction by the United States, and two projects downstream owned by the Arkansas Power & Light Co., all located on the Ouachita River in Arkansas.

Investigation instituted in 1954 involving the Borel and Kern River No. 1 plants of the Southern California Edison Co., the Kern Canyon plan of the Pacific Gas & Electric Co., and the upstream Federal Isabella project, all located on the Kern River in California.

Other Potential Basin Investigations

Present research indicates that there are three other river basins in the United States—the Roanoke, White and the Kanawha—in which there are both Federal and non-Federal power projects in operation for which no formal investigation has been instituted to determine headwater benefit payments, if any. It is contemplated that formal investigations of those basins will be instituted as soon as practicable.

The respective investigations involving the Coosa, Missouri, Savannah, Clarion, Ouachita, and Kern Rivers, were not instituted earlier because the Federal reservoirs affected were not placed in operation until the year 1950 or subsequent thereto.

Non-Federal Public Agencies to Benefit

Attention is called to the fact that beneficiaries of the legislation proposed in S. 1574, as amended, would include non-Federal public agencies, such as State, municipal or other public bodies which have constructed or may develop headwater improvements.

Endorsement by the President

President Eisenhower, in his budget messages to the Congress in 1955 and 1956, endorsed the principle embodied in S. 1574 and the amendment, expressing the hope that the Congress would enact legislation. In his 1955 budget message, the President said:

> Under the Federal Power Act, licensees of hydroelectric projects which benefit from headwater impoundments of other projects, either public or private, must make annual payments to the upstream developer in accordance with benefits received. The Federal Government is not required to make similar payments when Federal projects derive such benefits. In simple equity, this should be done. I recommend enactment of legislation which would require such Federal payment.

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In his 1956 budget message, the President reiterated his views, as follows:

> In order to establish equity between the Federal Government and other interests, I recommended in my 1955 budget message enactment of legislation to provide that the Federal Government make payments to non-Federal owners of water resources projects when Federal hydroelectric power developments benefit from these projects. Payments are now required from other licensees deriving such benefits and I see no reason why the Federal Government should be exempted. I hope the Congress will amend the Federal Power Act during the session to require such Federal payments.

Opposition

The proposal is opposed by the National Rural Electric Association, the American Public Power Association, the National Farmers Union, and the Northwest Public Power Association. Opposition was expressed at committee hearings, as witnesses, by Senators Morse, Oregon; Magnuson and Jackson, Washington; and Gore, Tennessee.

Reports of Executive Agencies

FEDERAL POWER COMMISSION

Report on S. 1574, 84th Congress, A bill to provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom, and for other purposes

This bill provides that in those cases where any hydroelectric power facility owned by the United States is benefited by the construction and operation of any reservoir by another party (State, municipality, person, or private corporation), the United States shall pay to the other party an annual charge not to exceed the value of the benefits realized or a portion of the costs of the non-Federal facility furnishing the benefits. Recommendation as to the amount of such charge is to be made to the Congress by the Secretary of the Interior, or other agency head having administrative jurisdiction of the marketing of the power from the Federal hydroelectric facility.

Section 3 of the bill provides for similar annual payments with respect to payments to the United States by another party where any water-use facility owned by the United States benefits a hydroelectric power project owned by another party. The Secretary of the Interior, or other agency head having administrative jurisdiction over the Federal water-use facility, is directed to fix the charge. Provision is also made for debits and credits on the books of the Treasury Department between different Federal agencies on account of the benefits realized by a federally owned hydroelectric power project from the construction or operation of a federally owned water-use facility.

Section 4 of the bill provides that the Secretary of the Interior shall fix annual payments to be made between parties other than the United States where the water-use facility of one party benefits a hydroelectric power project of the other party.

Section 10 (f) of the Federal Power Act (16 U. S. C. 803 (f)) provides that when licensees are benefited by reservoirs or other headwater improvements constructed by other parties, including the United

States, they shall reimburse the owner of the improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. By the third paragraph of section 10 (f) (which was added in 1935) the requirement for payments for headwater benefits was imposed upon nonlicensees under certain circumstances.

It thus appears that the bill would attempt to provide for the same sharing of headwater improvement costs as provided by Congress in section 10 (f) of the Federal Power Act. However, the bill would not accomplish this objective by amending the Federal Power Act but, in effect would repeal section 10 (f) of the Federal Power Act and transfer to the Secretary of the Interior the authority to determine charges to be paid and to assess them against the proper parties, instead of working through the Federal Power Commission as at present.

This arrangement would be extremely awkward, with the Commission having jurisdiction over new licensees for other purposes and over existing licensees for this and all other purposes, and the Secretary of the Interior having jurisdiction for this limited purpose over some licensees but not having a basis for making the jurisdictional determinations inherent in the proposal or for determining the benefits received. Also the bill could not apply even in this respect to outstanding licenses under the Federal Power Act for those licenses may be amended only with the mutual consent of each licensee and the Commission.

Moreover the bill raises some procedural questions which have already been settled by Congress in the Federal Power Act; namely, the manner in which parties may apply for and secure and have reviewed a determination of the headwater benefits received and the costs to be shared. In order to provide a fully effective means of administering this bill, corresponding provisions would have to be enacted providing for notices, hearings, rehearings, court review, and enforcement of determination orders.

The Commission is in complete agreement with the substantive proposal of the bill to provide for annual payments for headwater benefits received by non-Federal power developments and for similar annual payments by the United States which in like manner receives benefits at federally owned power projects. The Commission has so recommended and again urges that section 10 (f) of the Federal Power Act be amended accordingly. It does not recommend passage of this bill but recommends in lieu thereof that the entire bill be stricken after the enacting clause and that language somewhat along the lines of the attached substitute be enacted in lieu thereof.

FEDERAL POWER COMMISSION,
By ——— ——— *Chairman.*

SUBSTITUTE SECTION 31 OF FEDERAL POWER ACT

The Federal Power Commission recommends that the bill S. 1574 be stricken after the enacting clause and that the following be substituted in lieu thereof:

That subsection (f) of section 10 of the Federal Power Act (16 U. S. C. sec. 802 (f)) is hereby repealed.

SEC. 2. That the following new section be added to the Federal Power Act:

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"SEC. 31. (a) Whenever any hydroelectric power project owned by non-Federal interests is or will be benefited by the construction, operation, or maintenance of any reservoir or other water-use facility, the Commission, after notice to the owner or owners of any project so benefited, and after opportunity for hearing, shall determine and fix a reasonable and equitable annual charge to be paid to the owner of such facility furnishing such benefits, including the United States if it be the owner of the facility providing the benefit. The annual charges hereunder shall be such part of the fixed costs of the facility furnishing the benefit plus such part of the annual operating and maintenance costs of such facility, including land rentals and similar charges, as the Commission may deem equitable: *Provided*, That such annual charges shall not exceed the value of the benefits realized or received.

"(b) Whenever any hydroelectric power project owned by the United States is or will be benefited by the construction, operation, or maintenance of any reservoir or other water-use facility, the Commission, after notice to the Federal agency operating the project so benefited and the Federal agency or owner of the facility furnishing the benefit, and after opportunity for hearing, shall determine and fix a reasonable and equitable annual charge to be paid to the owner of such facility furnishing such benefits, such charge to be determined as provided in the preceding paragraph: *Provided*, That payments shall be required for benefits furnished by one Federal facility to another only if the cost of operating one of said facilities is payable from a revolving fund, and the cost of operating the other is payable from some other fund or direct appropriation: *Provided further*, That where no payment is required, the charges determined shall nevertheless be considered as an expanse of the facility receiving the benefit and as accrued revenue of the other facility, with an appropriate equal adjustment in the repayable Government capital invested in each such facility.

"(c) Annual charges assessed hereunder may be readjusted by the Commission at periods of not less than five years after notice and opportunity for hearing or readjusted at any time by the Commission as changed conditions may warrant after notice and opportunity for hearing.

"(d) All charges collected for the benefits provided by any facility owned by the United States shall constitute revenues of the facility providing the benefit and such revenues shall be disposed of in accordance with any provisions of law applicable thereto.

"(e) All parties affected by any determination hereunder (except any agency of the United States in each instance where the cost of operating the facility involved is financed by direct appropriations) shall bear a reasonable share of the cost to the Commission of making the determination, and all such parties shall pay their share of such cost, as fixed by the Commission, into the Treasury of the United States for credit to miscellaneous receipts: *Provided*, That for those Federal facilities where payment into the Treasury is not required by this paragraph, the reasonable share of the cost as fixed by the Commission shall nevertheless be considered as an expense of the facility involved.

"(f) Appropriations or other funds available for operation of the facility concerned shall be available to pay the annual or other charges

that may be assessed against the United States pursuant to the provisions of this section.

"(g) No party receiving a notice under subsections (a) or (b) of this section shall be required to pay annual charges under this section for benefits received prior to the enactment of this section or be required to pay annual charges under this section for benefits received more than five years prior to the date on which the Commission gives notice to such party as provided in subsections (a) and (b) hereof; nor shall any party receiving a notice under subsection (a) of this section be required to pay to any non-Federal interest annual charges under this section if it is paying or is required to pay similar annual charges under State law."

UNITED STATES
DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., May 17, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

DEAR SENATOR MURRAY: A report from this Department has been requested on S. 1574, a bill to provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom, and for other purposes.

This bill, if enacted, would provide for compensation to be made by owners of hydroelectric facilities to the owners of other water-use facilities by the construction, operation, or maintenance of which the hydroelectric facilities are benefited. Sections 1, 2, 3, 4, and 5 of the bill spell out the procedure and standards to be followed in four classes of cases:

(1) Those in which a Federal hydroelectric facility is benefited by a non-Federal water-use facility (secs. 1 and 5);

(2) Those in which one Federal hydroelectric facility is benefited by another Federal water-use facility (sec. 2);

(3) Those in which a non-Federal hydroelectric facility is benefited by a Federal water-use facility (secs. 3 and 5); and

(4) Those in which one non-Federal hydroelectric facility is benefited by another non-Federal water-use facility (sec. 4).

The bill, in effect, apparently intends to elaborate on and, in some respects, to modify and expand section 10, subsection (f), of the Federal Power Act (16 U. S. C. 803 (f)). This subsection reads, in pertinent part, thus:

"* * * whenever any licensee * * * is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the [Federal Power] Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owners of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. * * *

"Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against

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any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements * * *.

"Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission * * * shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement."

The Department of the Interior agrees in principle with the purposes of S. 1574. It recommends, however, that for its text there be substituted the text of S. 3434, 83d Congress. A copy of our report of June 2, 1954, to the Committee on Interstate and Foreign Commerce recommending enactment of that bill is attached for your information.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., June 2, 1954.

Hon. JOHN W. BRICKER,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR BRICKER: This is in response to your letter of May 24, 1954, requesting the comments of this Department on S. 3434, a bill to amend section 10 (f) of the Federal Power Act to provide that charges shall be paid by Federal power projects which are benefited by stream improvements constructed by other parties, the payment to be determined in the same manner as for charges to be paid by non-Federal interests, and for other purposes.

The Department favors enactment of this bill.

Careful consideration has been given by the Department to the provisions of this bill and to the general problem of computing and assessing benefit charges as among water resources projects. The Department is currently cooperating with the Federal Power Commission in its investigations to determine headwater benefits accruing to licensed projects from the Grand Coulee, Albeni Falls and Hungry Horse projects in the Columbia Basin and the Canyon Ferry project in the Missouri River Basin.

One of the principal objectives of the bill is to provide that benefit charges be assessed on Federal power projects which are benefited by other stream improvements owned by non-Federal interests. The Department fully agrees with this objective. As the President stated in his 1955 budget message it is only equitable that this be done. If non-Federal interests are assessed for payment of benefits received from federally owned projects, they should be compensated when their projects in turn provide benefits to federally owned projects.

An earlier version of this bill in draft form has been reviewed by the Department which suggested certain perfecting amendments. The language of S. 3434 adequately takes account of the suggestions of this Department and we have no further comments or suggestions.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the committee.

Sincerely yours,

RALPH A. TUDOR,
Acting Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., May 12, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: This will acknowledge your request of March 29, 1955, for the views of the Bureau of the Budget on S. 1574, a bill to provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom, and for other purposes.

The President has recommended in his budget messages both this year and last year that legislation be enacted to provide that the Federal Government make payments to non-Federal owners of water resources projects when Federal hydroelectric power developments benefit from these projects. The Federal Power Commission has reported on S. 1574 to your committee, recommending that such legislation take the form of a substitute draft bill submitted with its report rather than S. 1574 as introduced. The Bureau of the Budget concurs in this recommendation.

Accordingly, you are advised that enactment of S. 1574, if amended as recommended by the Federal Power Commission, would be in accord with the program of the President.

Sincerely yours,

DONALD R. BELCHER,
Assistant Director.

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